THE INVESTIGATION OF THE MURDER OF MOLLY JUSTICE

A Review of the Conduct of the Criminal Law

Enforcement Authorities, 1943 - 1996

MARTIN R. TAYLOR, Q.C.

Prepared for the Attorney General of British Columbia

August 31, 1996

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August 31, 1996

Stephen D. Owen, Q.C.
Deputy Attorney General of British Columbia
Ministry of Attorney General
504 - 910 Government Street
Victoria, BC V8V 1X4

Dear Mr. Owen:

Re: The Investigation of the Murder of Molly Justice

On July 3, 1996, I was instructed to inquire into and report by this date on the conduct of the criminal law enforcement authorities in the case of Anneta Margaret (Molly) Justice, who was murdered at Saanich, B.C., on January 18, 1943. This is my report.

Yours faithfully,

M.R. Taylor

Martin R. Taylor, Q.C.
MRT/sas
Encl.

ERRATA

Page	Line	Correction
24	10	"There [not "these"] are two . . .
35	7	Should read ". . . communication between them [inserts "them"] which I . . ."
43	1	Should read: " . . . Edward Pepler, Q.C., [not "K.C."]
49	4	Should read: " . . . he was definitely not [not "not definitely"] Frank's father."
51	8	Should read: " . . . communication between them [inserts "them"] I have . . ."
69	last	Should read: "fun to be locked [not "hooked"] up with a murder (sic)."
113	4th last	After ". . . were re-ordered." insert: "He did, of course, decline to act as counsel. Assuming . . ."
113	2nd last	Should read ". . . and leaving administrative aspects of [inserts "administrative aspects of"] the case . . ."

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THE INVESTIGATION OF THE MURDER OF MOLLY JUSTICE

A Review of the Conduct of the Criminal Law Enforcement Authorities, 1943-1996

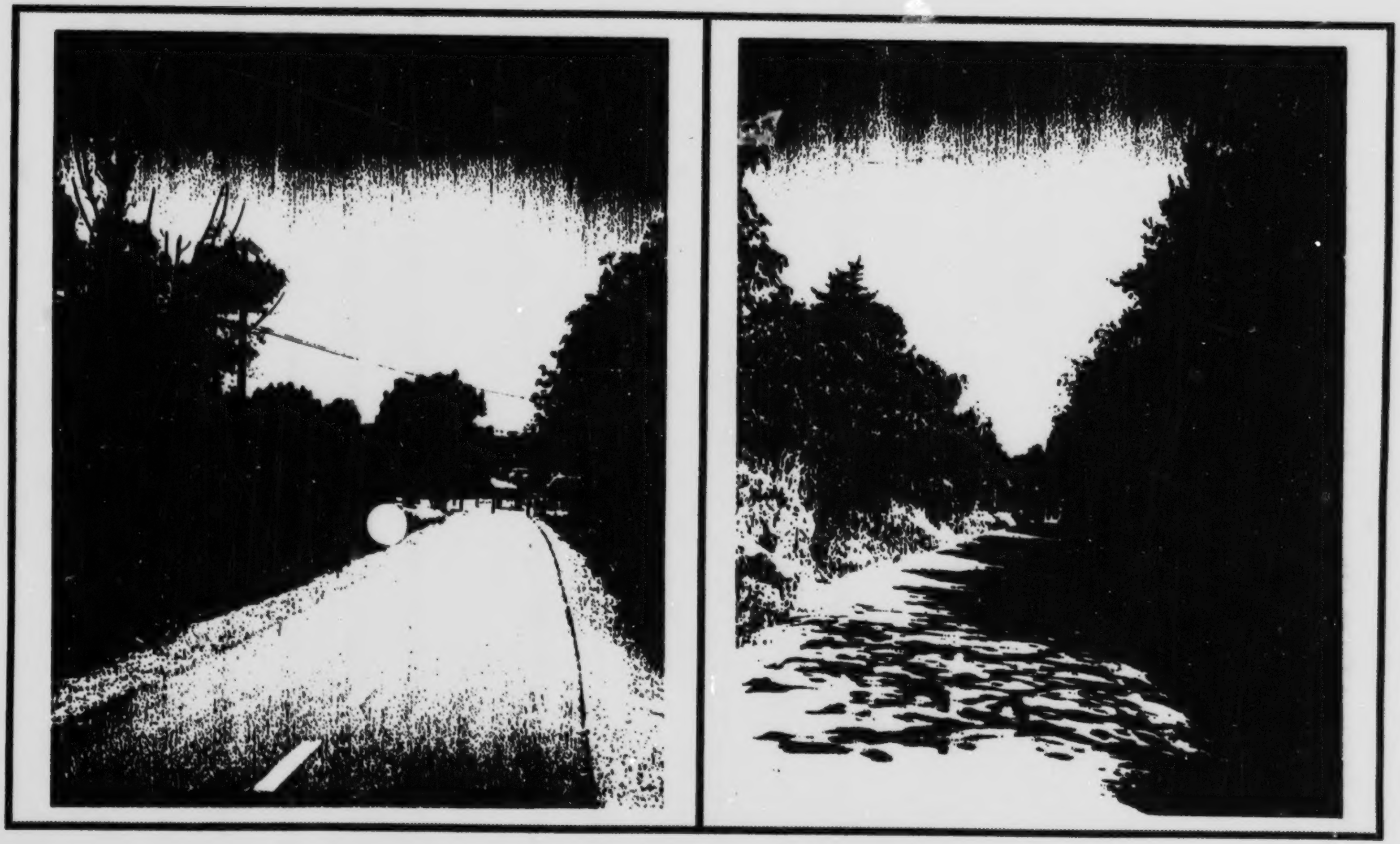
I. INTRODUCTION

Fifteen year-old Anneta Margaret Clive (Molly) Justice was beaten and stabbed to death at about 6:10 p.m. on the evening of January 18, 1943, while walking alongside the CNR tracks in the Victoria suburb of Saanich, B.C.,[1] on her way home from work.

That this crime has remained unpunished is a matter of continuing public concern in the Greater Victoria area, more than half a century later.

Molly Justice was not sexually assaulted. Four months after she was killed, however, an 11-year-old girl to whom I shall refer to as J.M.[2] was indecently assaulted in the same area by a youth wielding a knife. She told the police that her assailant threatened that if she resisted he would do the same to her as he had done to Molly Justice.[3] She identified Frank Hulbert (known also as Frank Pepler) from a photograph as her assailant. Frank Hulbert or Pepler, then 15, later claimed to be a nephew of the Provincial Deputy Attorney General, Eric Pepler, K.C. Evidence so far discovered

THE CNR RIGHT-OF-WAY AS IT APPEARS TODAY



These photographs depict the CNR right-of-way as it is today, now the Galloping Goose Trail, looking southwest towards Darwin Ave. (left) and northeast towards Brett Ave. (right). The site where Molly's body was found is identified by a white dot in the left photograph.

does not support recent statements in a Victoria newspaper that he was either a stepson or nephew of Eric Pepler; it seems possible they were more remotely related. Frank's parents were Thomas and Mary Jane Pepler; [4] his father, Thomas Pepler, is described on their marriage certificate as "left an orphan when an infant", and his parents as "unknown".[5]

Frank Hulbert (as I will generally call him) must have admitted to the Saanich police that he assaulted 11-year-old J.M. but denied that he murdered Molly Justice. He said that a fellow worker, William Mitchell, 41, admitted to him during a conversation between them on the day after the murder that it was he that killed Molly Justice.[6] Thus the law enforcement authorities might: (i) have charged Hulbert with murder and called Mitchell to prove his innocence and show Hulbert's story of Mitchell's confession to be a fabrication suggesting consciousness of his own guilt; or (ii) have charged Mitchell with the murder and called Hulbert to prove his guilt by the confession which Hulbert said that Mitchell made. They did the latter. Hulbert gave evidence for the Crown at Mitchell's preliminary hearing and trial, but his evidence did not persuade the jury. Ten months after the murder Mitchell was acquitted, a verdict later to be dramatically vindicated.

In November, 1943, a few days after Mitchell's acquittal, and again probably sometime during 1948, Hulbert made 'unwarned' or informal statements to uniformed police officers in which he appears to admit having murdered Molly Justice. I have seen no evidence that these statements were followed up at that time by efforts to obtain further evidence against Hulbert, and in particular a full 'warned' confession likely to be accepted by a court.

In 1967, more than two decades later, Saanich police and R.C.M.P. officers visited Hulbert in the converted bus in which he had lived for some years at Port Alberni, B.C.[7] They warned him and obtained from him a full confession that the evidence he gave against Mitchell was false. Hulbert, now 40, was charged with perjury and twice convicted. He was sentenced to what amounted to five years' imprisonment. Efforts were made by the police at this time to obtain a confession from him that he had murdered Molly Justice. His responses were essentially equivocal. Acting on the advice of the Attorney General's Department and municipal prosecuting counsel, Saanich police refrained from charging him with the murder.[8]

Frank Hulbert died at Port Alberni in February, 1996.[9] Four months later it was reported in the *Victoria Times-Colonist* that Inspector Al Hickman of the Saanich Police Department had declared Frank Hulbert to be the murderer of Molly Justice.[10] Stories thereafter published by the Victoria media described Eric Pepler as Hulbert's uncle or stepfather, and suggested that Hulbert's guilt of the murder of Molly Justice had been "covered up".[11]

On July 3, 1996, I was asked by Stephen Owen, Q.C., Deputy Attorney General, to investigate and report by August 31, 1996, on any and all aspects of the case.[12] In particular, I was asked to report on "whether (1) Frank Hulbert should have been charged with the murder of Molly Justice or the sexual assault of J.M. and (2) the Deputy Attorney General in 1943, Eric Pepler, or anyone else covered up evidence on behalf of Hulbert." I was instructed that I would be provided with subpoena powers, if necessary, under Part I of the *Inquiry Act*. I interpreted these instructions as requiring that within the time mentioned I gain the best understanding I could of the conduct of the law enforcement authorities involved and determine, among other things, whether there is evidence available, or evidence which might reasonably be obtainable, which would justify the more time-consuming and expensive process of a formal inquiry. I would have been unable without a formal inquiry to make a finding of conduct of the sort alleged in the performance of duties relating to the administration of the criminal law against a living person, that is to say, without that person having an opportunity to hear the evidence, cross-examine witnesses and present their case. These basic rights, long recognized by the law, could not in my view have been denied to anyone against whom so serious a finding might be made.

The main witnesses who produced information are listed in Appendix (d). I received the co-operation of every one I interviewed. I have not found it necessary to ask for subpoena powers. I have found no need for a formal inquiry.

The report consists of an explanation of the criminal process in British Columbia at the relevant times, an outline of the first phase of the case during which William Mitchell was acquitted of murder, an examination of the involvement at that stage of Eric Pepler, a history of the second phase during which Frank Hulbert was convicted of perjury and review of the conduct of the authorities involved in that phase, an outline of events this year including the announcement by the Saanich Police that Hulbert was the murderer of Molly Justice, a review of the strength of the case against Hulbert at the critical stages, and my conclusions. The appendices include the terms of reference, a list of the persons involved, a chronology, the principal documents referred to in the report and names of those interviewed.

The footnotes to the text will be found at the end of each section; some of the documents referred to in the footnotes will be found in Appendix (f).

I wish to express my appreciation to everyone who assisted in this task, whether of their own volition or in answer to a request, and particularly to Cecil O.D. Branson, Q.C., who has on his own account been gathering information and documents relating to the case for the last 15 years. Without the assistance provided to me at the outset by Mr. Branson the task would have been far more difficult, and many more questions would have remained unanswered at the end.

I am profoundly indebted also to Jason Herbert, student-at-law, who has rendered invaluable assistance in every stage of this work.

While truth is immutable, memory is a highly perishable commodity; this is something of which those who work in the courts are profoundly aware. As months, years and in this case decades pass, forgetfulness and the processes of rationalization and recreation take an inevitable toll. After 29 and 53 years respectively -- the time periods here involved -- the recollection of honest witnesses to the same event will often differ on all but the most basic points, and sometimes even as to these. But in the present case there is the added difficulty that most of those whose memory, however imperfect, might have provided answers to the critical questions are gone, some long gone. Frank Hulbert died before the case again came to public attention this year; Eric Pepler, K.C. died 39 years earlier; Det. Sgt. Stewart of the Saanich police, who pursued the case for many years, is gone, as are almost all of the counsel involved in the court proceedings. So, too, is Louis Lindholm, Q.C., who played a brief but controversial role.

Faced with the inevitability of evidentiary imperfections and the fallibility of human memory and understanding, the law makes no claim to be able in every case to arrive at absolute truth. It has instead adopted a system for resolving allegations of misconduct under which presumptions are made in favour of the individual and the question asked is whether, to an appropriate standard of proof, those presumptions are rebutted by the evidence.

Everyone is presumed not only to be innocent of wrongdoing but efficient in their work, honest in their dealings, of good repute and to act in good faith. The weight of evidence required to rebut these presumptions increases with the gravity of the charge made. An allegation that a person involved in enforcement of the criminal law has improperly protected someone from prosecution for murder is not only a charge of obstructing justice but from a moral and ethical, if not strictly legal, standpoint an allegation also that they have made themselves accessory to a most serious crime. Persuasive evidence -- something more than rumour and speculation -- is required in such a case to displace the presumptions I have mentioned.

I have decided that I ought to adopt that approach in carrying out the present task, and with regard to those now dead, as well as those still living.

I cannot claim to have spoken in so short a period to everyone who might have relevant information to offer, nor to have seen every relevant document. I have not been able to answer every question raised. My conclusions are based on what I have discovered in two months.

- - - - -

Footnotes

1. Bench Book of Coady J., Mitchell murder trial, Nov. 1-3, 1943; *Victoria Daily Times* ("*Times*"), Nov. 1, 1943, p. 1. See below, Map of the Swan Lake Area, p. 22.

2. J.M. has been identified by name in recent media coverage, but I do not believe this to be consistent with modern practice with respect to the identification of victims of crime. I shall refer to her only by initials.

3. Interview with J.M., July 29, 1996, and subsequent telephone interview. She is now sure that this is what he said -- he intended her to believe that he had killed Molly Justice, and she believed him.

4. British Columbia Certificate of Registration of Birth, Francis James Pepler (registered June 21, 1927, Victoria).

5. Manitoba Official Notice of Marriage, Thomas Pepler and Mary Jane Cockings (registered June 5, 1919, Portage la Prairie).

6. Statement by F.J. Hulbert, June 12, 1943; Bench Book of Coady J., *supra* note 1; *Victoria Daily Colonist* ("*Colonist*"), Nov. 2, 1943, p. 11; *Times*, Nov. 3, 1943, p. 5.

7. Saanich Police Department Report, Oct. 25, 1967; Interview with Dan Creally, July 18, 1996. See below, Chapter V, part (a).

8. Letter from Neil McDiarmid to J.W. Anderson, Aug. 6, 1968. See below, Chapter V, part (e).

9. *Victoria Times-Colonist* ("*Times-Colonist*"), June 14, 1996, p. A1.

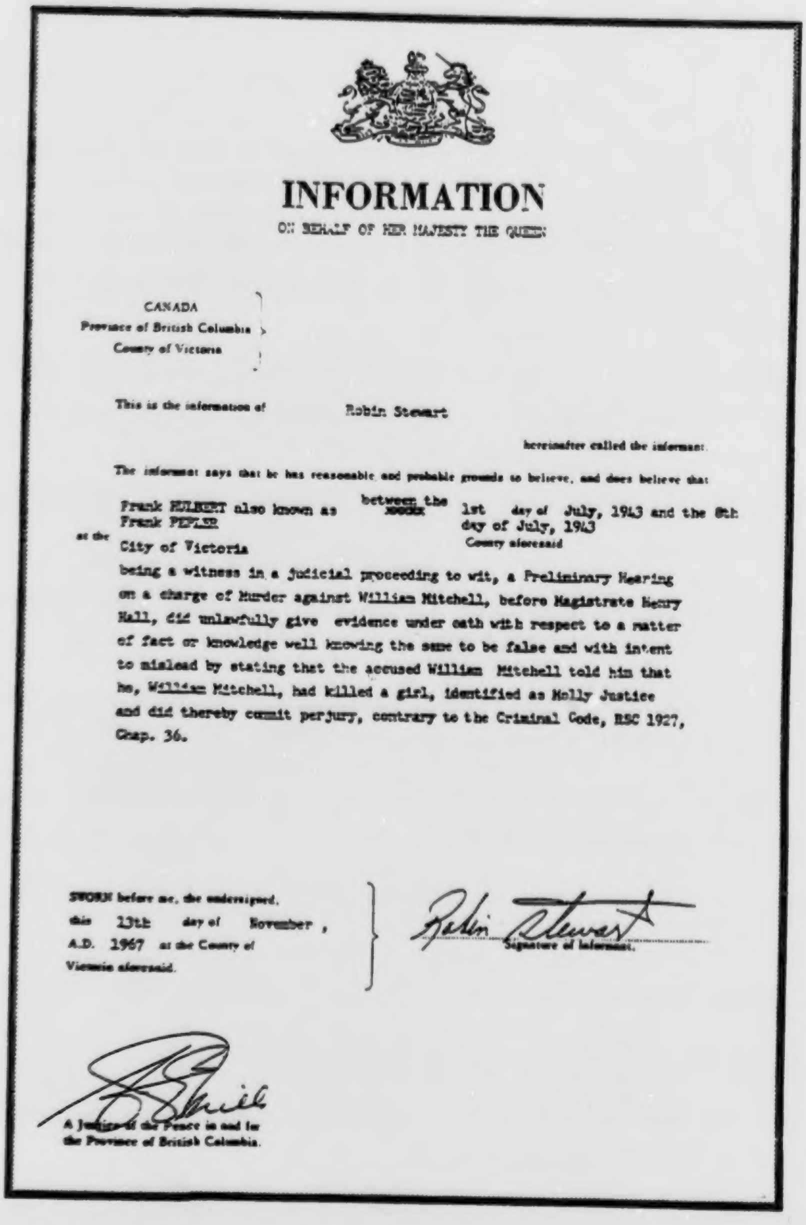
10. *Ibid.*, pp. A1, A6.

11. *Times-Colonist*, June 18, 1996, p. A1; *Times-Colonist*, June 19, 1996, p. B3; *Times-Colonist*, June 30, 1996, pp. A1, A4.

12. Terms of Reference; letter from Stephen Owen to Martin Taylor, July 3, 1996. See Appendix (a).

- - - - -

AN INFORMATION



INFORMATION

ON BEHALF OF HER MAJESTY THE QUEEN

CANADA
Province of British Columbia
County of Victoria

This is the information of Robin Stewart

hereinafter called the informant.

The informant says that he has reasonable and probable grounds to believe, and does believe that

Frank HULBERT also known as Frank PEPLER between the 1st day of July, 1943 and the 8th day of July, 1943 at the City of Victoria County aforesaid

being a witness in a judicial proceeding to wit, a Preliminary Hearing on a charge of Murder against William Mitchell, before Magistrate Henry Hall, did unlawfully give evidence under oath with respect to a matter of fact or knowledge well knowing the same to be false and with intent to mislead by stating that the accused William Mitchell told him that he, William Mitchell, had killed a girl, identified as Molly Justice and did thereby commit perjury, contrary to the Criminal Code, RSC 1927, Chap. 36.

SWORN before me, the undersigned,
this 13th day of November,
A.D. 1967 at the County of
Victoria aforesaid.

Robin Stewart
Signature of Informant.

A Justice of the Peace in and for
the Province of British Columbia.

This is the Information by which Hulbert was charged in 1967 with perjury. The Information against William Mitchell, in 1943, would have been in similar form. It is said to have been sworn by Sgt. E.C. Elwell.

II. THE CRIMINAL PROCESS, 1943-69

An appreciation of the operation of the criminal law enforcement system in British Columbia during the relevant periods is essential to an understanding both of the events which followed the death in 1943 of Molly Justice, and led to the trial of William Mitchell for her murder, and also those of 25 years later surrounding the arrest and conviction of Frank Hulbert for committing perjury in the evidence he gave at William Mitchell's trial.

(a) The Laying of a Charge

A criminal proceeding in Canada is initiated by the swearing of an Information before a Justice of the Peace. [1] A police officer or any other citizen can appear before a Justice of the Peace and swear an Information and, provided that the Justice of the Peace is satisfied with the evidence of the informant and that the matter is one of substance, that judicial officer will issue a Summons to the person against whom the Information is sworn, or a Warrant for that person's arrest. This is how a prosecution is started.

The right of any person, whether police officer or ordinary citizen, to apply to a Justice of the Peace in this way, if he or she believes on some substantial ground that a crime has been committed, is an important safeguard. It is, however, very rarely indeed that anyone other than a law enforcement officer swears an Information. The Information is simple; the form appears in the Criminal Code. The informant swears that he or she *knows* that the person named has *in fact*, at a named place and on or about a stated date, committed a named offence defined by a section of the Code, or, more often, that he or she *believes on reasonable grounds* that the person named has committed that offence. We do not have a copy of the Information by which William Mitchell was charged with the murder of Molly Justice, but it can be regarded as certain that it was sworn by a member of the Saanich police, almost certainly Sgt. E.C. Elwell,[2] the officer in charge of the investigation. In the Information he would have sworn that he believed, and had reasonable grounds for believing, that William Mitchell had committed the murder of Molly Justice at Saanich, B.C., on January 18, 1943. This is the way in which criminal charges have almost invariably been laid by police forces in British Columbia in this century.

It must be assumed that the officer concerned did honestly believe Mitchell to be guilty of the crime, and that the principal ground on which he based that belief was the statement made to the Saanich police by Frank Hulbert that Mitchell had confessed to committing the crime. The officer must have regarded that statement, with all the other information known to him, as providing reasonable grounds for believing Mitchell to be guilty of the murder.

(b) Municipal Prosecuting Counsel

Police officers normally seek the advice of local prosecuting counsel before swearing an Information in any major case and it may, of course, be assumed that any prosecuting counsel who advises the laying of a charge will thereafter take on the prosecution at that charge, or ensure that the task is taken on by other counsel; the "charging decision" of prosecuting counsel at this stage constitutes a quasi-judicial assessment of all aspects of the case, and constitutes an important safeguard against misuse of the criminal justice system.

In the first phase of events with which this inquiry is concerned, when William Mitchell was charged with murder, the Saanich police were advised by Ernest Tait, a lawyer retained by the municipality as municipal prosecuting counsel, and also by Victoria lawyer Claude Harrison, who was specially retained by the municipality to assist with the Molly Justice case. In the second phase, when Frank Hulbert was charged with perjury, the Saanich police were advised by J. Wallace Anderson, who headed a prosecution team which then served several Victoria-area municipalities. While it was possible for municipal prosecuting counsel to seek advice on charging decisions from the Attorney General's office, and this happened at one stage during the second phase of the present case,[3] it was unusual for this to happen, and I have seen no evidence that it happened during the first phase, when William Mitchell was charged with murder.

After a serious charge has been laid by the police, and a summons or warrant issued, local prosecuting counsel will normally represent the Crown in the ensuing proceedings before what, at the times with which we are concerned, was known as the Police Court or Magistrate's Court, and is now the British Columbia Provincial Court. Where the charge is of a less serious nature, and is proceeded with "summarily", it can be disposed of there. Where the charge is more serious, and is proceeded on by way of indictment, that court holds what is called a "preliminary hearing", to determine whether there is sufficient evidence to warrant a trial, and the result of that hearing is that the accused is either "discharged" or "committed for trial".

At the times with which we are concerned the function of municipal prosecuting counsel in serious cases dealt with by indictment continued until committal for trial; only at that stage did the matter become the responsibility of the Attorney-General's office.

(c) The Attorney General's Office

The office of the Attorney General is unique in that while a member of the government of the day the Attorney General also exercises important quasi-judicial functions associated with the discharge of the government's responsibility, under Section 92(14) of the Constitution Act, 1867, for administration of justice within the province.

During the 1940s, particularly during the second World War when the present case started, and also during the 1960s, the legally-trained staff of the Attorney General's office involved in the administration of criminal justice was small. It seems that for most of the wartime years there were, in addition to the Attorney General himself, only the Deputy Attorney General and one junior lawyer who could be called on to deal with the work of the office on the criminal side -- the task fell essentially on the Deputy Attorney General, Eric Pepler, K.C., whose conduct in regard to the present case has been called into question by the media coverage which preceded this inquiry. During what I have called the second phase, between 1967 and 1969, the criminal law administration function was the responsibility of the department's first full-time Director of Criminal Law, Neil McDiarmid, Q.C., and his deputy.

The function of the Attorney General's office following a committal includes reviewing preliminary hearing transcripts to determine whether the evidence presented truly warrants proceeding with the issuance of an indictment, preparing the indictment, acting for the Crown or instructing outside counsel to act for the Crown in the higher courts, and dealing with all matters which arise thereafter in connection with the case until its final disposition at trial or on appeal. In addition to responsibility for the prosecution of persons committed for trial, the Attorney General's criminal law duties included responsibility during the initial phase of the present case, in the 1940s, for the work of the British Columbian Provincial Police force and liaison with the Royal Canadian

Mounted Police, and during the second phase, in the 1960s, for dealings with the latter, which had by then taken over the provincial police function.

The Attorney General's criminal responsibilities have at all times included also the authority and duty to stay prosecutions, by whoever initiated, which in the view of the Attorney General do not serve the interests of justice--a prerogative exercised in court.

(d) Pre-Trial Publicity

The concept of a fair trial as understood under our legal system requires continual care, on the part of police, prosecuting counsel, government agencies, the media and everyone else involved, to ensure that the presumption of innocence to which an accused person is entitled unless and until found guilty is not impaired by prejudicial pre-trial publicity.

A former exception to that rule, which has since effectively been eliminated, was the right of the media at the times with which we are concerned to report evidence given at a preliminary hearing. Apart from that exception, now gone, it is improper to publish information which might prejudice the public, including potential jurors, against an accused person. The needless publication before conclusion of a trial of information prejudicial to the accused, other than evidence given in open court, can result in prosecution for contempt of court, in a change of trial venue, and even in the staying of a charge. In this important respect our law differs markedly from that of some other countries, including the United States.

This rule has always been applied with particular force in the case of alleged confessions by accused persons, evidence which might not be admitted at trial and would be highly prejudicial if prematurely disclosed. Magistrates were able to accept confessions in writing at a preliminary hearing without disclosing the content, or to order that the fact and content of a confession not be published, even before specific authority in this regard was conferred by the *Criminal Code*: see *R. v. Thibodeau* (1956), 116 C.C.C. 175 (at p. 183) (N.B.S.C. Q.B.)

In the case of the charge of murder against William Mitchell there was prejudicial newspaper publicity at the time of his arrest -- a story containing factual errors which presumed his guilt. This was brought to the attention of the court at the preliminary hearing by his counsel, Patrick J. Sinnott.[4] It might under other circumstances have resulted in an application for a change of trial venue. Instead, Mr. Sinnott elected to accept the venue, in the interests perhaps of securing his client's acquittal as soon as possible. William Mitchell brought a civil action for libel against the newspaper's publisher,[5] because the published statement was not merely prejudicial to him on a trial in which his life was at stake, but also untrue. There were complaints made also about premature release of information gathered by the police during the investigation,[6] and newspaper criticism of police investigation work.[7]

William Mitchell was awarded libel damages of $1,000-- a sum equivalent today to at least $20,000. Mr. Sinnott's efforts to obtain *ex gratia* compensation for his client from the provincial government for wrongful prosecution, however, were unsuccessful.

(e) The Position Today

There have been significant changes in the administration of the criminal law in British Columbia since the events occurred with which this report is concerned.

Prosecuting counsel throughout the province today are members of the staff of the Attorney General -- municipalities no longer employ their own prosecutors.[8] There is a formal process today by which a police officer who disagrees with the decision of local Crown counsel against the laying of a charge may appeal to the Regional Crown Counsel and if not satisfied with the decision of Regional Crown Counsel appeal further to the Assistant Deputy Attorney General, Criminal Justice Branch, and to the Deputy Attorney General.[9] No such procedure existed prior to the mid-1970s, when charging decisions were a municipal responsibility. The only recourse available to a police officer who had been advised by municipal prosecuting counsel against laying a charge would have been to swear the Information anyway and to call on the municipal authorities, or the Attorney General's office, to take on the prosecution. If both refused to do so -- or if the Attorney General's office entered a stay -- those would, of course, be actions for which the authorities concerned would bear public responsibility.

The long-established right of a police officer, like any other citizen, to attend before a Justice of the Peace to swear an Information, whether or not approved by a prosecuting counsel, remains unimpaired by the intervening changes.

- - - - -

Footnotes

1. See illustration, opposite.

2. Interview with Insp. Al Hickman, Aug. 15, 1996.

3. Letter from Neil McDiarmid to J.W. Anderson, Aug. 6, 1968. See Chapter V, part (e).

4. Transcript of Preliminary Hearing, *R. v. Mitchell*, June 24, 1943, pp. 2-3.

5. Mitchell sued the *Victoria Daily Times*, for its publication on June 19, 1943 (at p. 8) of the a statement in its "Hometown Letter" column.

   Mr. Justice Bird of the B.C. Supreme Court held that the statement was defamatory and awarded damages of $1000. The case is reported at: *Mitchell* v. *Times Printing & Publishing Co. Ltd.* (1943), 80 C.C.C. 318 (B.C.C.A.), rev'g [1943] W.W.R. 286 (B.C.S.C.); *Mitchell* v. *Victoria Daily Times* (1944), 81 C.C.C. 42 (B.C.S.C.).

6. Letter from W.E.G. Crisford to Attorney General R.L. Maitland, Jan. 22, 1943; Letter from Maitland to Crisford, Jan. 23, 1943; Letter from Crisford to Maitland, Jan. 28, 1943; Letter from Crisford to Maitland, Feb. 4, 1943.

7. Editorial, *Colonist*, Feb. 4, 1943, p. 4.

8. This change occurred in the mid-1970s.

9. *Crown Counsel Act*, S.B.C. 1991, c. 10, s. 4(4); British Columbia, Ministry of Attorney General, *Crown Counsel Policy Manual*, Charge Approval - Police Appeal Regarding Crown Decision, Ref. JRC #61, DPI #7 (draft). (See Appendix (f))

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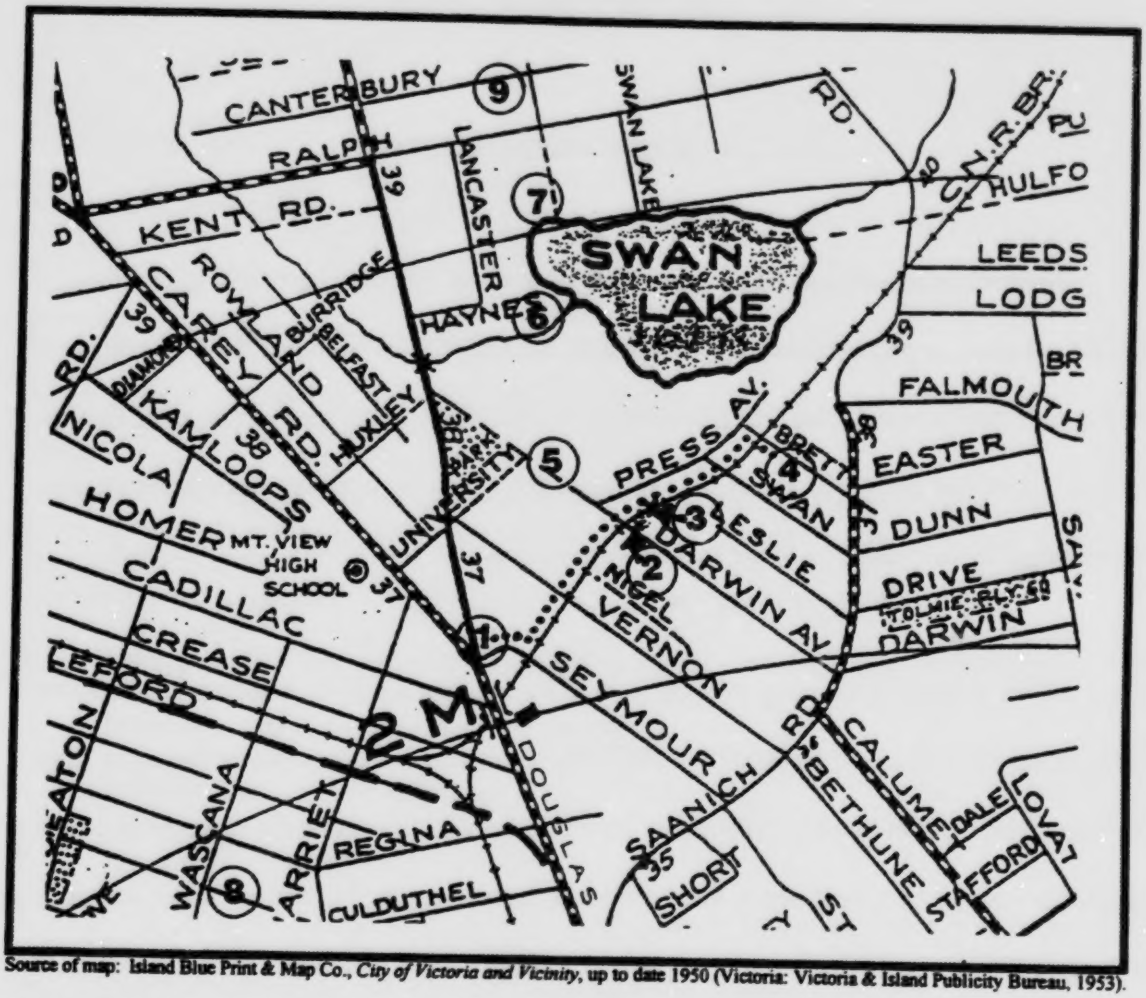
III: THE FIRST PHASE, 1943-48

(a) The Murder and Investigation

The tracks are gone, and the Canadian National Railway right-of-way is now a blacktopped trail for suburban joggers, cyclists and roller-bladers, but Tony Oliver, who was there 53 years ago on the night Molly Justice died, had no difficulty in locating for us the spot just north of Darwin Avenue where her body was found; it was found by a fireman from the nearby fire station, accompanied by two members of the Saanich Police force.

Molly Justice was returning from her work as a seamstress at a garment factory in downtown Victoria just after 6 p.m. on January 18th, 1943. She was taking a short-cut along the tracks from the bus stop on Douglas Street to her home on Brett Avenue, the seventh of eight streets more or less parallel to Douglas between Saanich Road and Swan Lake park. The railway ran under, across or at the foot of each of these before crossing Saanich Road (see Map, next page). The distance from the bus stop to Molly's house by the tracks was a little over half a mile, perhaps a quarter of a mile less than the shortest street route. Newspapers of the day had stories blaming Molly's death on the wartime street lighting "dim-out", but there never were any lights along the tracks. It may indeed have been lighter along the tracks that evening than was normally the case after sunset in the winter, because there had been a snowfall.

THE SWAN LAKE AREA


CANTERBURY
9
RALPH
39
LANCASTER
SWAN LAKE
RD.
C.N.R. BR.
PU
HULFO
7
KENT RD.
SWAN LAKE
LEEDS
LODG
ROWLAND
BURRIDGE
HAYNES
6
CAREY RD.
39
RD.
DIAMOND
BELFAST
HUXLEY
BR
FALMOUTH
NICOLA
KAMLOOPS
38
UNIVERSITY
5
PRESS AV.
BRETT
4
SWAN
EASTER
3
LESLIE
DUNN
HOMER
MT. VIEW HIGH SCHOOL
37
2
DARWIN AV
DRIVE
TOLMIE
DARWIN
CADILLAC
NIGEL
VERNON
CREASE
1
LEFORD
SEYMOUR
2 M
SAANICH RD.
CALUMET
BETHUNE
SEATON
WASCANA
HARRIET
REGINA
DOUGLAS
DALE
LOVAT
STAFFORD
35
SHORT
8
CULDUTHEL
ST

Source of map: Island Blue Print & Map Co., *City of Victoria and Vicinity*, up to date 1950 (Victoria: Victoria & Island Publicity Bureau, 1953).

This map depicts the Swan Lake area of Saanich as it was in 1943. The following points are identified: (1) the bus stop at Seymour, at which Molly Justice disembarked from the Douglas St. bus the night of the murder; (2) the site where Molly's body was found, beside the C.N.R. right-of-way, at Darwin Ave.; (3) the site where the two parcels were found, on the railway tracks; (4) Molly's home, at 861 Brett Ave.; (5) the approximate location of the site where the purse and cigarette case were found underneath a bucket, beside the winter overflow from Swan Lake; (6) the approximate location where Frank Hulbert first confronted J.M.; (7) the approximate location where Frank Hulbert sexually assaulted J.M.; (8) the home of Frank Hulbert on Lurline St., where he was arrested by Victor Smith; (9) the home of Frank Hulbert's sister on Canterbury Rd., which he identified to J.M.; dotted line: the route of Molly's short-cut from bus stop to home.

Her assailant must have accosted Molly on the railway tracks just northeast of the Darwin Avenue crossing, because it was here that fireman Arthur Logie found the parcels she had been carrying.[1] Her body was about 10 feet from the tracks at the crossing.[2] It was plain that there had been a struggle between these places, and the police found human hair at Molly's fingernails.[3] She had been stabbed at least 30 times, and also struck on the head with a blunt object, perhaps a rock. The autopsy disclosed that death had resulted from loss of blood caused by the knife wounds, nine of which were to the neck, one severing a jugular artery.[4] The wounds were almost all to the right side of the body, suggesting her assailant was left-handed.

That Molly Justice had not been sexually assaulted could obviously have been because she resisted the attack. Her purse was taken,[5] but it seemed altogether unlikely that robbery would have been the motive for so ferocious an assault.

Four days after the murder, Commissioner Parsons of the British Columbia Provincial Police reported to Attorney General Maitland on the assistance being rendered by his force to the local police in the investigation, but it is apparent that the Saanich municipal police were in charge of the case throughout. The authority to which that force was responsible was the Saanich municipal police commission, chaired by the Reeve, E.C. Warren.[6]

On January 25, a week after the murder, Sgt. Elwell of the Saanich police obtained and executed a search warrant on the Justice home on Brett Avenue.[7]

Living there were Molly's widowed mother, Muriel Justice, Molly's brother Robin Justice, D'Arcy Martin, lawyer and former Deputy Assessor of Succession Duties for the Province, and D'Arcy Martin's son, Patrick Martin.[8] The police heard rumours suggesting that Molly had been murdered at her home and her body -- and presumably her parcels also -- thereafter taken several hundred yards from the house through the snow to the places where they were found. Hair samples were seized during the search of the Justice home and found not similar to those found on Molly's fingers.[9] Thus a bizarre but enduring theory of the murder was put to rest early in the investigation. These are two notable aspects to the incident. Firstly, hair sample comparison is said to have produced conclusive results in excluding occupants of the Justice home from further suspicion, yet there was to be no mention of this technique being used in the cases of William Mitchell and Frank Hulbert, later prime suspects in the case.[10] Secondly, the large group which entered the small Justice home to execute the warrant included, in addition to five Saanich police officers and a Vancouver criminologist retained by the Saanich police, the two lawyers retained by the municipality to advise the police -- Ernest Tait and Claude Harrison.[11] As would be expected at the time, the police were being guided by their own municipal legal advisors from the beginning of the Molly Justice investigation.

At an inquest held on January 29, 11 days after the murder[12] Coroner Dr. E.C. Hart and a jury heard evidence describing most of the circumstances of the murder, including the places where the parcels and body were found, and this was published in the newspapers. The jury returned a verdict of murder by "person or persons unknown". Two weeks after the murder, Molly's purse was found under a bucket on a rubbish dump and the newspapers reported denials by the Saanich police of rumours in the area that this discovery had been made.[13] The investigation continued, numerous leads were followed, none led anywhere, and three months passed with no helpful developments. On May 5, 1943, Saanich Police Chief Josiah Bull turned to the RCMP for help, and on May 11 the force agreed to help if so requested by the Attorney General. This was reported by Chief Bull to Attorney-General Maitland on May 17.[14]

But on the previous day an event had occurred which was dramatically to change the course of the investigation.

(b) The Assault on J.M.

Eleven-year-old J.M., who lived west of Swan Lake, about half a mile from the scene of the murder of Molly Justice, was out on May 16, 1943, with her two younger brothers, near the creek which flows into the lake, when they were approached by a youth.[15]

More than half a century later she recalls vividly the terrifying events that followed.[16] The youth persuaded them to go with him in a rowboat out onto the lake. He pointed to the roof of a house to the north of the lake where he said he was staying. When the boat was in the centre of the lake he rocked it wildly and she was so frightened she said the Lord's Prayer. He took them back into the mouth of the creek and said that whichever of them drew the longest straw had to stay with him. The younger children were offered the shorter straws and immediately ran away. The youth then dragged J.M. into the bush, held a knife to her throat and threatened to murder her *as he had murdered Molly Justice* -- she is sure that this is what he said. He said also that he had friends hiding in the bush. After sexually assaulting her he told her that he would let her go only if she promised not to tell anyone what had happened.

J.M. ran to a nearby house, but the people there were not eager to help her. She begged them to take her home. In the end they did, but they refused to take her hand -- she had to run behind them. When she got home she told her parents what had happened.

J.M. led the police to the house to which the youth had pointed as the place he was staying, but they did not find him there. They later showed her a photograph of a person who she immediately identified as her assailant. She heard nothing more thereafter. Until the time of this inquiry she believed that her assailant had escaped unpunished. The psychological consequences of this incident have profoundly afflicted her, and continue to do so.

J.M. recently retained a lawyer to seek compensation for her under the *Criminal Injury Compensation Act*, R.S.B.C. 1979, c. 83.[17] Her claim cannot succeed because, as now framed, the Act provides compensation only for victims of crimes committed after June, 1972.[18]

(c) Hulbert's Arrest and Statement

Frank Hulbert (or Pepler), the person who was identified by J.M. as her assailant, was arrested on May 16, 1943, convicted two weeks later in Juvenile Court before Judge Henry C. Hall of indecent assault on J.M., and on June 3, 1943, sentenced for this offence to indefinite confinement at the Boys Industrial School in Coquitlam, B.C.[19]

The promptness with which Hulbert was convicted, and the fact that his victim heard nothing further from the police after identifying him from a photograph, lead to the conclusion that he must have pleaded guilty to the charge of sexually assaulting her. The documentary evidence is clear that Hulbert was charged, convicted and sentenced for this offence. He served at least a year for it, not at the Boys' Industrial School but at the Oakalla adult provincial jail in Burnaby, B.C. Thus one of the questions posed by the terms of reference is clearly answered -- Hulbert was not protected from prosecution and punishment for his assault on J.M.

His victim is convinced that her parents would at some point have told her, had they known of Hulbert's conviction. That the police apparently did not tell the family may have been due to the preoccupation of the small force with the Molly Justice investigation. Whatever the reason, for half a century J.M. believed that her assailant had escaped unpunished. This has undoubtedly added to the psychological impact of the incident on her.

It must have been when arrested for the assault on J.M. that Hulbert, in support of his denial of the murder of Molly Justice, told the police the story of William Mitchell's admissions to him which he was to repeat at Mitchell's preliminary hearing and trial. He was taken by the police to the scene of the murder the next day. A search warrant for Mitchell's belongings at a logging camp at Youbou, B.C., was obtained by Saanich police on June 5, 1943,[20] two days after Hulbert was sentenced for the assault. During this period Hulbert must also have told the police that Mitchell committed homosexual acts against him, the subject of the only charge on which Mitchell was, in fact, to be arrested.[21]

On June 12, 1943, Hulbert gave the Saanich police a written statement. A typewritten transcript of it reads, in part, as follows (spelling corrected):[22]

> He (Mitchell) said he left work early and took the bus up to the fire hall and got off, and went up the road just past the bridge and went along the path to the second bridge and he waited for her to come and

> then he asked her to give him a piece of tail and when she refused he hit her on the head with a stone. And when she came to he killed her.
>
> . . . . .
>
> And if I said anything he would do the same to me. So I did not say anything up to now. He said he took the money out of the purse and threw it into the lake and lost one of his gloves and that he burned the other one and also the wig he had.

This is the "bare bones" of the evidence which Hulbert was to give for the Crown when Mitchell stood trial, five months later, on the charge of murder. Had Hulbert's story been believed, there can be little doubt Mitchell would have been hanged.

There is evidence that before he gave this statement Hulbert had taken Saanich police officers to the scene of the murder, and had showed them places where he said Mitchell had told him that various things associated with the murder happened.

(d) Mitchell's Arrest and Trial

It was on June 15, 1943, three days after Hulbert gave his written statement, that the police arrested William Mitchell; he appeared in Victoria police court the following day charged with what newspapers of the day describe as "a statutory offence".[23]

On the next day, June 17, 1943, Mitchell was charged with murder,[24] the only charge on which he was tried -- the original charge was withdrawn in police court the following week.[25] On June 15, the day of the arrest, Sgt. Elwell of Saanich police obtained a warrant to search William Mitchell's belongings at a rooming house on Johnson Street, in Victoria, for a knife.[26] The case went to preliminary hearing with what would today be regarded as remarkable dispatch -- the hearing started before Magistrate Henry Hall on July 2, 1943, only 17 days after Mitchell's arrest and 15 days after murder charge had been laid.

William Mitchell was born at Eagle Depot, Quebec, on January 12, 1894,[27] and was 49 when charged with murder. He had served with the Royal Canadian Mounted Police.[28] At the time of the murder he was working at the British American Paint Company plant in downtown Victoria, where 15-year-old Frank Hulbert also worked.[29] Between the murder and his arrest, Mitchell moved to Youbou, north of Victoria, to work as a logger.[30] He had no criminal record.[31] The case against him consisted of Hulbert's evidence of the alleged admissions which Hulbert said were made in conversation between them the day after the murder and a knife found among his belongings which bore traces of what an expert said was human blood.

At his preliminary hearing William Mitchell took the very unusual course of making a statement from the prisoner's box. He said: "Your Honour and gentlemen, I had nothing to do with this murder, know nothing about it. I didn't know this girl existed, had never seen her anywhere. I never was in that vicinity -- don't know Saanich."[32]

His trial took place in Victoria less than four months later, on November 1, 2 and 3, 1943, and he testified in his own defence. He said Hulbert's story of the conversation between them was completely false. He said the blood on his knife got there when he cut himself. Newspapers reported "wild applause" from the public gallery when the jury's verdict of "not guilty" was announced. "So great was the applause which broke out in the usually staid court," one report said, "that shouts of officials for order could not be heard."[33]

Hulbert's evidence at trial differed in some respects from that which he gave at the preliminary hearing. Defence counsel P.J. Sinnott put the discrepancies to him and elicited from him an admission that he had assaulted several children. He was asked whether his real name was Pepler and he said it was. At one point he said he wished he hadn't told the police the story about his conversation with Mitchell. He denied that he had made it up because he feared he would be charged with the murder of Molly Justice.[34] Mr. Justice Coady told the jury they should "look with caution, even suspicion" on Hulbert's evidence.[35]

The judge's charge, the jury's verdict and the reaction from the public gallery were to be vindicated 24 years later when Hulbert said of the evidence he gave against Mitchell: " Mitchell never told me that he had killed Molly Justice -- I didn't like him, so I lied".[36]

(e) Hulbert's Subsequent Conduct

On August 5, 1943, less than two months after being committed to the Industrial School for Boys for the indecent assault against J.M., Hulbert was transferred to the Oakalla adult jail in Burnaby to be detained there as a material witness in the case against William Mitchell.[37]

In October, 1943, he was transferred to Victoria to give evidence at Mitchell's trial;[38] on November 14, eleven days after Mitchell's acquittal, he was being escorted back to Oakalla by three provincial police officers when he made several remarkable statements.[39] In a report dated November 26, 1943, Constable J. Lockie of the Victoria Highway Patrol, one of the escorting officers, says Hulbert told them he hated Mitchell and "would do the same to him as he did to Molly". The report recounts a description by Hulbert of events on the night Molly was killed. He said he remembered being in the vicinity of the murder but didn't recall much until he was riding his bicycle home. He said he remembered burning her glove and wallet in the furnace at his home and hiding her cigarette case under a pail near the murder scene. Constable Lockie said Hulbert said: "If you guys try to use this against me, it would do you no good, because I would deny it and you would not be able to prove anything". The constable quotes Hulbert as saying also that he did not want to talk about his objection during the trial to the name Pepler being his real name, adding that Deputy Attorney General was his uncle.

Constable Lockie says at the end of his report that he mentioned what Hulbert had said when he met Sgt. Elwell of the Saanich police later at the Victoria police station, and that Sgt. Elwell replied "that he was already cognizant of these facts".

Another of the three officers, Constable A.W. Quinn, gives in his written report a similar account, but adds also that Hulbert spoke of being in a "passionate fog" at the time he was in the vicinity of the Molly Justice murder, and said he thought he may have used a knife from his home. Constable Quinn reports that Sgt. Elwell, when told of these statements, said that "Hulbert had told him the same story", and asked: "What can we do about it?"

During his conversation with the officers while being taken to the mainland, Hulbert mentioned that he was going to be examined by a psychiatrist. This was a reference to a visit then scheduled to Dr. George A. Davidson, which was in fact to take place on December 4, 1943.[40] The purpose of the examination was to have been to determine whether "fogs" to which Hulbert referred when speaking to the Saanich police about the murder prior to the journey back to the mainland were genuine, and whether they may have been caused by an injury he suffered in an accident. Dr.

Davidson was to report that he did not believe Hulbert had any neurological damage. Dr. Davidson was to express his conclusion as follows:[41]

> I believe this boy is probably of dull normal intelligence. I do not think that an intelligence rating at this time would be of any value as I think that he will deliberately attempt to mislead one. I felt satisfied at the time of doing the examination that he was telling the story as he thought it would best suit his case and there were points of discrepancy in his story that made it almost certain that he was deliberately being untruthful. I believe that the history that he gave was not reliable and the story is not that that usually follows serious head injury. I would like to have the opportunity of looking over the chart that was made at the hospital at the time of his injury if that is available. My impression is that this boy is making up a story that he thinks will benefit his case.

Dr. Davidson's report, dated December 15, 1943, was addressed to Chief Josiah Bull of the Saanich police who had requested the examination.

Between the police chief's request for this examination and Dr. Davidson's report, correspondence took place between the Deputy Attorney General, Eric Pepler, and the Saanich authorities from which an inference of impropriety has been drawn in recent stories in the Victoria media. I will deal with this separately in the next chapter.

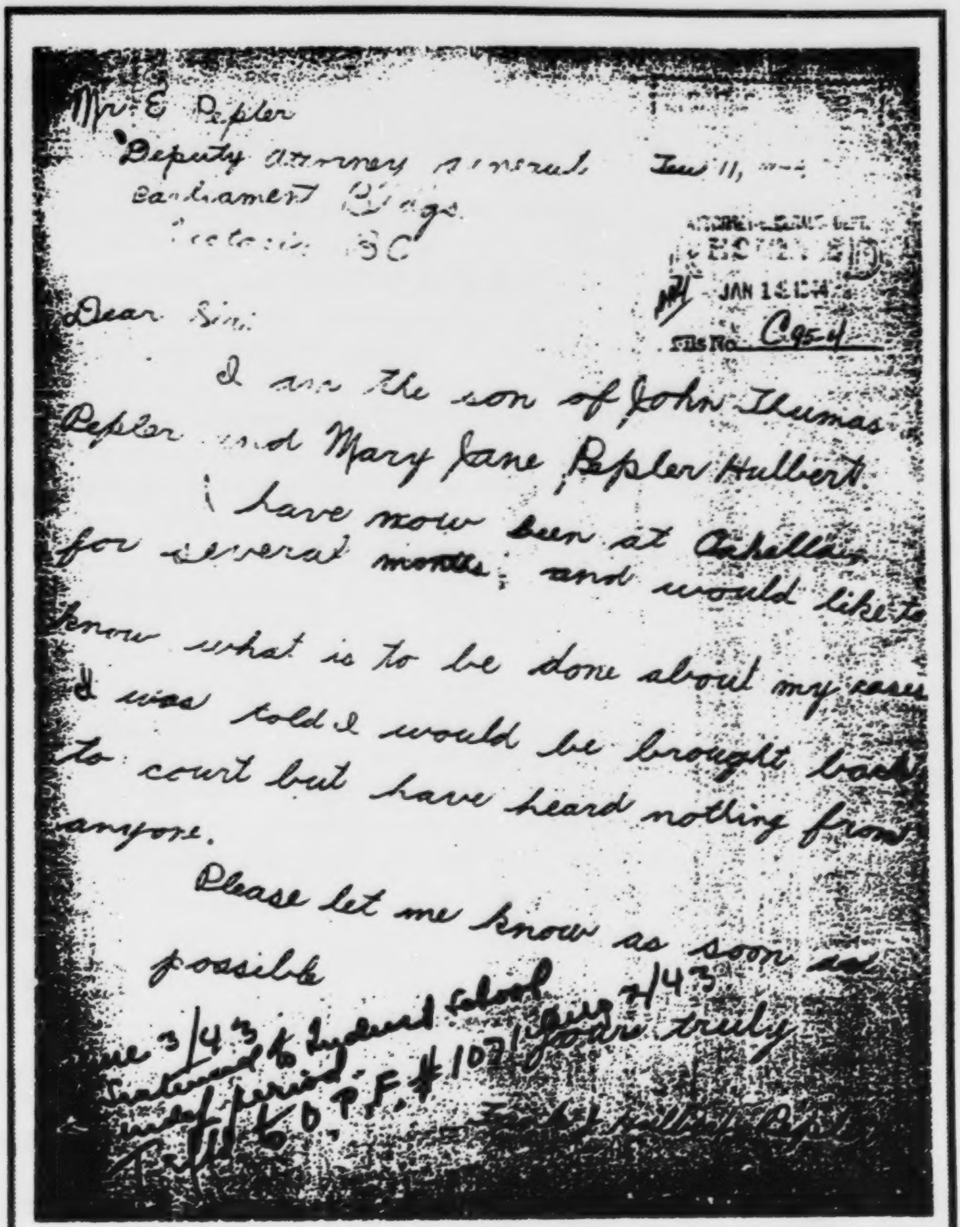
On January 28, 1944, Frank Hulbert was convicted on three counts of buggery, apparently committed against young boys, and sentenced to one year's imprisonment.[42] Sixteen months later, on May 30, 1945, an Order-in-Council was passed authorizing his return from Oakalla to the Industrial School for Boys in anticipation of his release. He was released into his mother's custody on June 2, 1945.[43] Hulbert was in jail for a little over two years, somewhat under one year of which would have been in respect of the 12-month sentence imposed in January 1944, and the balance in respect of the sentence of indefinite detention for the assault on J.M.

Early during this period of incarceration, Hulbert wrote a letter to Eric Pepler in which he may have had spelling assistance. This is the only communication between that I have seen. The letter is dated January 11, 1944, and it reads, in full, as follows:[44]

> Dear Sir:
>
> I am the son of John Thomas Pepler and Mary Jane Pepler Hulbert. I have now been at Oakalla for several months and would like to know what is to be done about my case. I was told I would be brought back to court but have heard nothing from anyone. Please let me know as soon as possible.
>
> Yours truly
>
> Frank J. Hulbert Pepler

This letter was written two weeks before Hulbert was to be brought back to Victoria to be sentenced on the three new counts. It was replied to by the Assistant Departmental Solicitor, who reminded Hulbert that he was serving an indefinite term in respect of the offence against J.M., and told him that the other charges he faced were in the hands of the Saanich police.[45]

FRANK HULBERT'S LETTER



Mr. E. Pepler
Deputy Attorney General Jan 11, 44
Parliament Bldgs.
Victoria BC

ATTORNEY-GENERAL'S DEPT.
RECEIVED
JAN 13 1944
File No. C95-4

Dear Sir:

I am the son of John Thomas Pepler and Mary Jane Pepler Hulbert.

I have now been at Oakalla for several months, and would like to know what is to be done about my case. I was told I would be brought back to court but have heard nothing from anyone.

Please let me know as soon as possible

Yours truly
Frank Hulbert [illegible]

ne 3/43 Sentenced to Industrial School indef. period.
Aug 7/43 Trfd to O.P.F. #1071

This is the handwritten letter from Frank Hulbert to Eric Pepler, dated January 11, 1944.

Hulbert was released in June, 1945. Nine months later, on March 4, 1946, he was convicted and sentenced to 12 months hard labour for contributing to juvenile delinquency. He was released from this sentence on January 11, 1947.[46]

(f) The Admission to Lewis Kamann

Lewis T. Kamann provides a living link between all phases of the Molly Justice case: he was a co-worker of Frank Hulbert and William Mitchell at the paint factory in 1943; he testified for the defence at Mitchell's trial; while a Victoria city policeman, in 1948, he spoke to Hulbert in the cells; he was consulted by the Saanich police prior to Hulbert's arrest in 1967; he gave evidence for the Crown in 1967 and 1969 at Hulbert's preliminary hearing and two perjury trials; and last month he assisted in this inquiry by recalling those events.[47]

Mr. Kamann testified at Mitchell's trial that Mitchell left the paint plant too late to have been able to be at the murder scene when the crime was committed. He testified also that Mitchell was wearing the same work clothes the next day and that there were no bloodstains on them. He gave other evidence contradicting Hulbert's story. He says he was satisfied that Hulbert was not telling the truth. It was inconceivable to him that anyone who had committed a murder would have give all the details of the crime which Hulbert claimed that Mitchell told him. He did not believe that all the facts of the murder related by Hulbert had been in the newspapers, and thought that some could only have been known to the person who committed it. About five years after the trial, probably in 1948 while he was a Victoria police constable, Mr. Kamann saw Hulbert again. He was brought into the cells by Saanich police to be held overnight. Mr. Kamann searched him, took him to a cell and said: "So they finally nailed you for the murder of Molly Justice?" He says that Hulbert then replied: "Sure, I killed her -- you prove it." Mr. Kamann does not know why Hulbert was brought in on that occasion by the Saanich police.

He says he told the desk sergeant what Hulbert had said to him, and believes the information was passed on to Victoria police detectives. He heard nothing more of it until the case was re-opened by the Saanich police almost 20 years later.

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Footnotes

1. Evidence of Patricia May McAllister, Agnes Reid, Arthur Logie, and Eric Elwell, Bench Book of Coady J., Mitchell murder trial, Nov. 1-3, 1943; *Times*, Nov. 1, 1943, p. 11; *Colonist*, Nov. 2, 1943, p. 13.

2. Evidence of Eric Elwell, Bench Book of Coady J., *ibid.*

3. Letter from T.W.S. Parsons to Attorney General R.L. Maitland, Jan. 27, 1943; *Times*, Jan. 22, 1943, p. 2.

4. *Times*, Jan. 29, 1943, p. 1; Evidence of Dr. J.H. Moore, Transcript of Preliminary Hearing, *R. v. Mitchell*, pp. 26-32; Bench Book of Coady J., *supra* note 1.

5. Evidence of Eric Elwell, Transcript of Preliminary Hearing, *ibid.*, pp. 136-39; Bench Book of Coady J., *ibid.*; *Times*, Nov. 2, 1943, p. 2. Molly's purse was found underneath an overturned bucket, beside the path which extended to the northwest, beyond the end of Darwin Ave. The bucket was on the edge of a garbage dump, within about two feet of an incline leading down to the winter overflow from Swan Lake.

6. Letter from E.C. Warren to T.W.S. Parsons, May 14, 1943; Letter from T.W.S. Parsons to Attorney General R.L. Maitland, May 25, 1943; Letter from Attorney General R.L. Maitland to E.C. Warren, May 25, 1943.

7. Information to obtain a Search Warrant at 861 Brett Ave., Victoria, Jan. 25, 1943; Warrant to Search at 861 Brett Ave., Victoria, Jan. 25, 1943.

8. Transcript of Preliminary Hearing, *supra* note 4.

9. Letter from Parsons to Maitland, Jan. 27, 1943, *supra* note 3.

10. *Ibid.*

11. *Ibid.*

12. *Times*, Jan. 29, 1943, p. 1; *Colonist*, Jan. 30, 1943, p. 11.

13. *Times*, Feb. 5, 1943, p. 11.

14. Letter from Josiah Bull to RCMP, May 5, 1943; Letter from K. Duncan to Josiah Bull, May 11, 1943; Letter from Josiah Bull to R.L. Maitland, May 17, 1943.

15. The approximate locations mentioned in this section are identified on the map of the Swan Lake area, on p. 22, above.

16. Interview with J.M., July 29, 1996, and subsequent telephone interview.

17. *Times-Colonist*, July 3, 1996, p. B4.

18. *Criminal Injury Compensation Act*, R.S.B.C. 1979, c. 83, s. 25.

19. Order in Council 1071/43, Aug. 2, 1943; Order in Council 917/45, May 30, 1945; Provincial Gaol Record of Frank Hulbert, no. 46791.

20. Warrant to Search premises of William Mitchell at Youbou, June 5, 1943.

21. *Mitchell v. Victoria Daily Times* (1944), 81 C.C.C. 42 (B.C.S.C.) at p. 44.

22. Statement by F.J. Hulbert, June 12, 1943.

23. *Colonist*, June 17, 1943, p. 11.

24. *Times*, June 17, 1943, p. 1; *Colonist*, June 18, 1943, p. 1.

25. *Colonist*, June 22, 1943, p. 11.

26. Warrant to Search at No. 6, Dale Rooms, Johnson Street, Victoria, June 14, 1943.

27. Criminal Record of William Mitchell, 1943.

28. Evidence of William Mitchell, Bench Book of Coady J., *supra* note 1; *Colonist*, Nov. 4, 1943, p. 2.

29. Evidence of Lewis Kamann, Transcript of Preliminary Hearing, *supra* note 4.

30. *Ibid.*

31. Criminal Record of William Mitchell, *supra* note 27.

32. Transcript of Preliminary Hearing, *supra* note 4, p. 184.

33. *Times*, Nov. 4, 1943, p. 10.

34. *Colonist*, Nov. 3, 1943, p. 11; *Times*, Nov. 3, 1943, p. 5.

35. *Colonist*, Nov. 4, 1943, p. 2.

36. Saanich Police Department Report, Oct. 25, 1967.

37. Memorandum from Deputy Provincial Secretary to Col. Eric Pepler, Nov. 20, 1944; Order in Council 1071/43, *supra* note 19.

38. Provincial Gaol Record of Frank Hulbert, *supra* note 19.

39. Report of Constable A.W. Quinn, Nov. 25, 1943; Report of Constable J. Lockie, Nov. 26, 1943.

40. Report of Dr. George A. Davidson, Dec. 15, 1943.

41. *Ibid.*

42. Provincial Gaol Record of Frank Hulbert, *supra* note 19.

43. *Ibid.*; Order in Council 917/45, *supra* note 19.

44. Handwritten letter from Frank Hulbert to Eric Pepler, Jan. 11, 1944.

45. Letter from Assistant Departmental Solicitor to Frank Hulbert, Jan. 14, 1944.

46. Provincial Gaol Record of Frank Hulbert, no. 51255.

47. Interview with Lewis Kamann, July 18, 1996.

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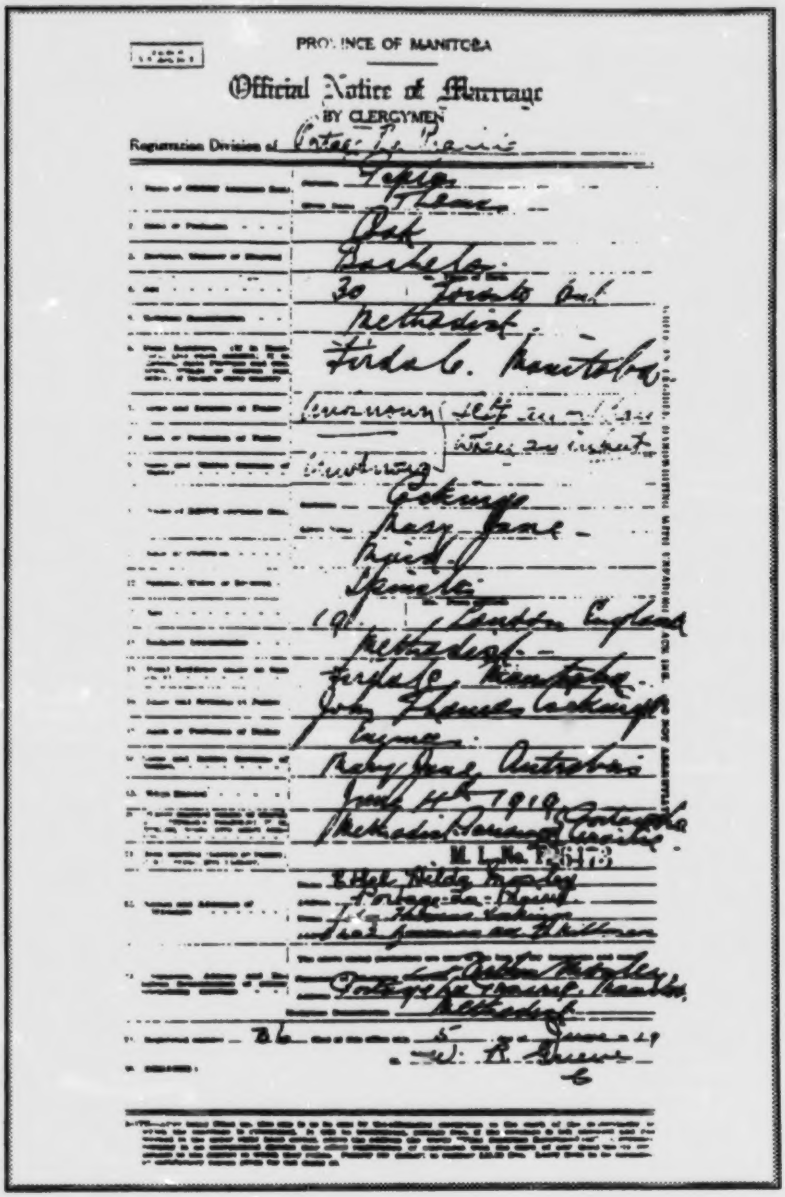
MARRIAGE CERTIFICATE OF THOMAS PEPLER



PROVINCE OF MANITOBA

Official Notice of Marriage

BY CLERGYMEN

Registration Division of Portage la Prairie

Pepler
Thomas
[illegible]
Bachelor
30 Toronto Ont.
Methodist
Firdale. Manitoba
Unknown (left [illegible] when an infant)
Unknown
Cockings
Mary Jane
Maid
Spinster
19 London England
Methodist
Firdale, Manitoba
John Thomas Cockings
Farmer
Mary Jane [illegible]
June 4th 1919
Methodist Parsonage Portage la Prairie Manitoba
M. L. No. F26173
Ethel [illegible]
Portage la Prairie
[illegible]
[illegible]
[illegible]
Portage la Prairie, Manitoba
Methodist
86 5 June 19
W. R. [illegible]

Thomas Pepler and Mary Jane Cockings are listed as the parents of Francis James Pepler on his birth certificate in 1927. Above is the certificate of their marriage, eight years earlier.

IV. THE PEPLER-HULBERT "CONNECTION"

(a) Eric Pepler, K.C.

Eric Pepler was born January 4, 1890, in Barrie, Ontario, the son of Francis Edward Pepler, K.C., a lawyer in practice there; he was educated at Upper Canada College, the University of Toronto and Osgoode Hall, and called to the Ontario Bar in 1914.[1]

He served in the Canadian Army during the First World War, in France, Belgium and Germany, achieved the rank of colonel by which he was often known in Victoria after the war, and was awarded the Distinguished Service Order and Croix de Guerre. He came to British Columbia after the war, was called to the B.C. bar in 1921, and practised in Victoria for seven years until 1928, when he joined the Attorney General's department as Departmental Solicitor. He became Deputy Attorney General in 1934 and held that position for 20 years until his retirement in 1954; he was created King's Counsel in 1941. Eric Pepler married Nora Cecily Brough of Toronto in 1921, and they had twin daughters in 1931. He died in 1957.

At the time of the murder of Molly Justice there were probably no more than three lawyers in the Attorney General's office involved in criminal law enforcement: Attorney General R.L. Maitland, Eric Pepler and, at least occasionally, an Assistant Departmental Solicitor. The Deputy

Attorney General appeared himself as counsel for the Crown in some civil and criminal cases and retained outside counsel to appear in others.[2]

As has already been noted, the function of the Attorney General's department in criminal matters at the time when Eric Pepler served as Deputy Attorney General, and for many years thereafter, did not involve advising police during the investigation and charging phases or acting for the Crown in the magistrate's courts. Where a crime occurred within a municipality such as Saanich which had its own police force and municipal prosecutor, the responsibility for investigation and the laying of charges and prosecuting them in summary conviction proceedings, or through preliminary hearing to committal for trial, rested with the municipal police and counsel retained by the municipality. The Attorney General's department took over a case only after there had been a committal for trial at a preliminary hearing. The department then decided whether to issue an indictment and provided, or retained, counsel to prosecute the case in the higher court after an indictment was issued. Up to that point the department's involvement was limited to providing assistance to the local authorities if requested, particularly the assistance of the British Columbia provincial police force.

It was in this context that Eric Pepler was to become involved in the proceedings in which Frank Hulbert was to play a central role.

(b) Frank Hulbert / Pepler

Frank Hulbert, as I have called him, was born Francis James Pepler, at Saanich, on June 13, 1927, to Thomas Pepler and Mary Jane Pepler (born Mary Jane Cockings).[3]

Thomas Pepler (sometimes called John Thomas Pepler) and Mary Jane Cockings had been married at Portage La Prairie, Manitoba, eight years earlier, on June 14, 1919.[4] In the space provided on their marriage certificate for the name of the groom's father there appears the answer: "Unknown. Left as orphan when an infant". This notation is not in the same handwriting as the balance of the main portion of the form, which may well have been completed by the officiating clergyman. The notation in question may have been written in later, possibly by the Registrar of Marriages. Thomas Pepler's place of birth is stated in the certificate as Toronto, and his age is stated as 30, which would make him a year or so older than Eric Pepler.

Thomas and Mary Jane Pepler already had one son, John Thomas Pepler, prior to the birth of Frank. Frank said on one occasion that his father died when he was three[5]. Mary Jane Pepler later married Cresswell Hulbert and had another family, and Frank then adopted his stepfather's surname -- that of his younger half-siblings.

It is, of course, obvious that as a teenager Frank Hulbert had serious psychological and behavioural problems. He was 15 at the time of the murder, 16 at the time of William Mitchell's trial, but he said he had only a grade four education, and claimed to have been in and out of several Victoria area schools.[6] Lewis Kamann remembers him in 1943 as a trainee or "gopher" at the paint factory.[7] He says Hulbert behaved in a bizarre way; he brandished a knife at women employees there, also once at Mr. Kamann, and they scuffled on one occasion. Mr. Kamann describes Hulbert as someone "with a screw loose" who did "oddball things" and sought to attract attention.

Dr. Davidson's report shows that as a teenager Frank had little regard for the truth.[8] The perjury which he committed, when giving evidence against a man on trial for his life, is perhaps, proof enough of this.

(c) Was There a Family Link?

The name Pepler is an unusual one;[9] from this alone one is easily driven to the assumption that Eric Pepler and Frank Hulbert Pepler must have been in some way related.

We know that Frank Hulbert referred on at least one occasion to Eric Pepler as his "uncle".[10] There is a report to which I will refer later that Hulbert is said to have claimed to have been "advised" by his uncle at the time of the 1943 events.[11] But to describe Hulbert as an unreliable witness would be an understatement, and his uncorroborated evidence on any matter cannot readily be accepted. We have seen that when Hulbert wrote to Eric Pepler from Oakalla in January 1944, two months after the Mitchell trial was over, he introduced himself with the words: "I am the son of John Thomas Pepler and Mary Jane Pepler Hulbert".[12] This is not, in my view, the way in which a person would normally write to an uncle, certainly not to one with whom he had previous dealings, particularly recent dealings. If Hulbert's father's marriage certificate tells the truth, they could not have been uncle and nephew; it seems clear that they were not stepfather and stepson. If the certificate does not tell the truth, many possibilities arise, including the possibility there was some relationship between them, but these remain possibilities. Census records show no Thomas Pepler or John Thomas Pepler living in the Pepler family home at Barrie, Ontario, in 1891 or 1901,[13] so that Thomas cannot have been an adopted, or foster, child there. If he was related to Eric Pepler it does not seem that he was in any sense "a member of the family".

Eric Pepler's surviving daughter says she never heard of John Thomas Pepler, Thomas Pepler or Frank Pepler.[14] I have heard of a fleeting reference to Eric Pepler expressing annoyance on some unknown occasion after his retirement that Frank Hulbert had described himself as his nephew.[15] I have seen a telephone slip referring to an affidavit in which the background of Frank Hulbert's father is said to be explained, but the affidavit is missing.[16]

With time and money, the mystery of how Frank Hulbert's father came to be called Pepler could, perhaps, be resolved, but I have not so far been able to resolve it.

(d) Mrs. Charlton's Recollection

Mrs. June Charlton was born in 1927 and lived as a child, in the mid-1930's, in one of the five similar attached brick houses on Superior Street, in the James Bay area of downtown Victoria, next door to a family which included Mary Pepler and her sons Jack and Frank.[17]

Sixty years later Mrs. Charlton, who now lives in Saanich, recalls the family; she remembers that Frank was her own age, and that there was a man staying there who she believes was called Eric. She knew this man to be neither the husband of Mary nor the father of Frank. She remembers him because he once broke her porcelain doll. Mrs. Charlton's mother and Mary Pepler visited each other's homes, and it was when she and Frank were about 7, and were left in the care of the man she thought of as Eric Pepler while her mother and Mary went shopping, that he smashed her doll. Her mother promised not to leave her with him again.

Mrs. Charlton remembers the Peplers moving to the Gorge Road area, and that her mother's friendship with Mary continued for sometime thereafter. She says that Mary Pepler made it plain that she was not married to Eric. She remembers the name "Cress", a different person, being mentioned at some point by Mary Pepler. This must have been a reference to Cresswell Hulbert, later to become Mary Pepler's second husband. Mrs. Charlton has no knowledge of Thomas Pepler, or John Thomas Pepler, Frank's father. She says she remembers the man staying in the Pepler house not as John or Thomas but as Eric, and that he was not definitely Frank's father. She is not sure when the two families lost touch with each other, but it must have been well before the events with which this report is concerned.

Mrs. Charlton's older brother, Jack Clarke, who lives in Armstrong, B.C., told me on the telephone that the name "Eric Pepler" may well have been the name of the man next door on Superior Street but he had no close dealings with the Pepler family.[18]

Mrs. Charlton offered her information to the Saanich police because the name "Eric Pepler", when she read it in the newspaper in regard to this inquiry, seemed familiar to her. She associated it with the man who stayed next door with Frank and his mother, Mary, when Frank was between 5 and 7 -- a man who was neither Frank's father nor his mother's second husband. Such a person might, of course, well have been known to Frank as an "uncle" and also have been thought of by persons outside the household as Frank's "step-father".

Mrs. Charlton's recollection is of events when she was between 5 and 7, more than 60 years ago. For the person she describes to have been Col. Eric Pepler (as I shall, for the sake of clarity, refer to him in here), he would have to have absented himself for two years from his wife and three-year-old twin daughters at the house on Denison Street in Oak Bay at which he is listed in the city directory[19] throughout the 1930s. He would have had to be staying during this period with Mary Pepler and her children on Superior Street in James Bay, a few blocks from the Parliament Buildings. The life which the man she knew as Eric Pepler followed there, as described by Mrs. Charlton, would have made it impossible, in my view, for him to have performed duties in the Attorney General's office. It would have been towards the end of the period of which she speaks, in 1934 when she was 7, that Col. Pepler was appointed Deputy Attorney General, perhaps the most responsible office in the provincial public service.

The possibility that Mrs. Charlton's memory is of Thomas Pepler, Mary's first husband -- the person listed in city directories of the time at the Pepler's Superior Street address[20] -- seem to be negatived by the fact that Thomas Pepler was Frank's father, and Mrs. Charlton was later told that the man to whom she refers was not Frank's father. It does not seem possible that the man in question was Cresswell Hulbert, later Mary's second husband, because Mrs. Charlton a recollection of another man called "Cress". The person who Mrs. Charlton recalls as "Eric" does not resemble Col. Pepler, as described by those who knew him. At first Mrs. Charlton was convinced they could not have been the same person; in the end she could not express an opinion. The probabilities, in my view, are definitely against it.

Mrs. Charlton's recollection raises the possibility that there was a man named Eric who stayed for a while in the Pepler home, who may not have been a Pepler at all but was thought of as a Pepler, and who could have been regarded as Frank's "uncle" or "step-father". This opens up the further possibility -- and it is, of course, no more than a possibility -- that Frank Hulbert confused Col. Pepler with someone else who had passed through his early life.

I find it impossible to base any conclusion as to the existence of a connection between Frank Hulbert and Eric Pepler on the evidence which I have seen and heard. Because of the manner in which Hulbert addressed Eric Pepler in the only communication between I have seen,[21] I believe that any connection which existed was not a close one.

(e) Did Eric Pepler Intervene?

In its editorial of June 21, 1996, the Victoria *Times-Colonist* says that the Saanich police files show that Eric Pepler "prevented Saanich police from laying a murder charge" against Frank Hulbert; the stories mentioned in the terms of reference suggest also that evidence against Hulbert was in some way "covered up" by Eric Pepler.[22]

I have found nothing to indicate that Eric Pepler did anything to prevent the Saanich police from laying a charge of murder against Frank Hulbert.

Eric Pepler could not, of course, have *prevented* the police from laying such a charge -- either before they charged Mitchell or after Mitchell's acquittal. The police were not responsible to the Attorney General's department. They were responsible to the municipal police commission, they had their own legal advice and they made their own charging decisions. The Attorney General's department could have prevented Hulbert being prosecuted to conviction in two ways: (i) had Saanich police sworn an Information against Hulbert the Attorney General's office could have had counsel appear in court and stay proceedings on the charge; (ii) had Hulbert been charged and prosecuted through a preliminary hearing to committal, the Attorney General's department could have refused to issue an indictment. The Attorney General's office would have been publicly answerable had it done either, and clearly it did neither.

Can it be said, then, that there is evidence from which it may be inferred that Eric Pepler *influenced* the Saanich police in favour of charging Mitchell rather than Hulbert, or against charging Hulbert after Mitchell was acquitted?

There is correspondence showing that Eric Pepler insisted, against the wishes of the Saanich police, that the Mitchell case be heard at the 1943 fall assize and not traversed to the spring assize, in order that they might locate a witness.[23] There is correspondence showing that he refused to accommodate the municipality's wish that the case be traversed so that Claude Harrison could act as counsel for the Crown.[24] There is evidence that he declined to act himself as counsel for the

Crown at the Mitchell trial, and advised the municipality that the case would be taken by Gordon A. Cameron.[25] On October 29, 1943, two days before the trial was to start, Mr. Cameron confirmed by letter the instructions that he was not to seek an adjournment.[26]

Eric Pepler's decision not to appear as counsel could have been for several reasons. It would, of course, have been appropriate if there were, in fact, a relationship between himself and the Crown witness on whose evidence the case would turn. This may or may not have been the reason. His insistence on proceeding promptly was in the interests of the accused; the result was that Mitchell was released from custody several months sooner than would have been the case had the trial been set over to the next assize. Many people plainly thought -- some as early, no doubt, as the preliminary hearing -- that Mitchell was innocent.

I come, then, to the admissions made by Hulbert on his way back to Oakalla, two weeks after the trial, and to Sgt. Elwell's response when told of these admissions. The documents relating to this period call for very careful scrutiny.[27]

Mitchell was acquitted on November 3, 1943. Hulbert remained in custody in Victoria for 11 days thereafter. Undoubtedly he was interviewed by the Saanich police about the Molly Justice murder during that time. In a letter to Eric Pepler dated November 22,[28] Saanich Reeve E.C. Warren records that Sgt. Elwell had gone to Vancouver to arrange the examination of Hulbert by Dr.

Davidson. This was, of course, prior to hearing reports of the constables who took Hulbert to the mainland. The reason for the interview with Dr. Davidson, the Reeve tells Eric Pepler, was to determine "whether the 'fogs' he referred to were real or shams, when he made reference to the murder of Molly Justice". The Reeve's letter goes on to say: "it later appeared in a long-distance telephone message between you and Mr. Elwell that Hulbert made a statement to the Provincial Police officers who transported him to Oakalla to the effect that he killed Molly Justice -- but was in a 'fog'". He notes that Eric Pepler had advised Sgt. Elwell not to have Hulbert examined until this development had been investigated.

Thus the correspondence discloses that prior to his return to the mainland Hulbert had told the Saanich police he was in a "fog" at the time of the murder. As a result, Sgt. Elwell sought to have him examined by Dr. Davidson, to discover whether this made sense from a medical point of view. When it was learned that on the way back to the mainland Hulbert had made admissions that he committed the murder, Eric Pepler informed the Saanich police and advised postponement of the examination -- which was being arranged through the Attorney General's Office -- until this had been investigated. The officers concerned were asked to prepare written reports, two of which are in existence. It was after seeing these that Eric Pepler wrote to Reeve Warren, on November 29,[29] to say that he would make the necessary arrangements with the Oakalla authorities if the Saanich police still wished to have Dr. Davidson examine Hulbert. He said also that the Saanich police could obtain copies of the reports of the escorting officers from the Provincial Police. On December 2,[30] Eric Pepler wrote to Reeve Warren to suggest again that the Saanich police chief obtain copies of the reports of the escorting officers from the Provincial Police. This letter contains a sentence on which emphasis may have been laid in the recent media coverage:

> You will appreciate that these are confidential reports made for police purposes only and are not for distribution.

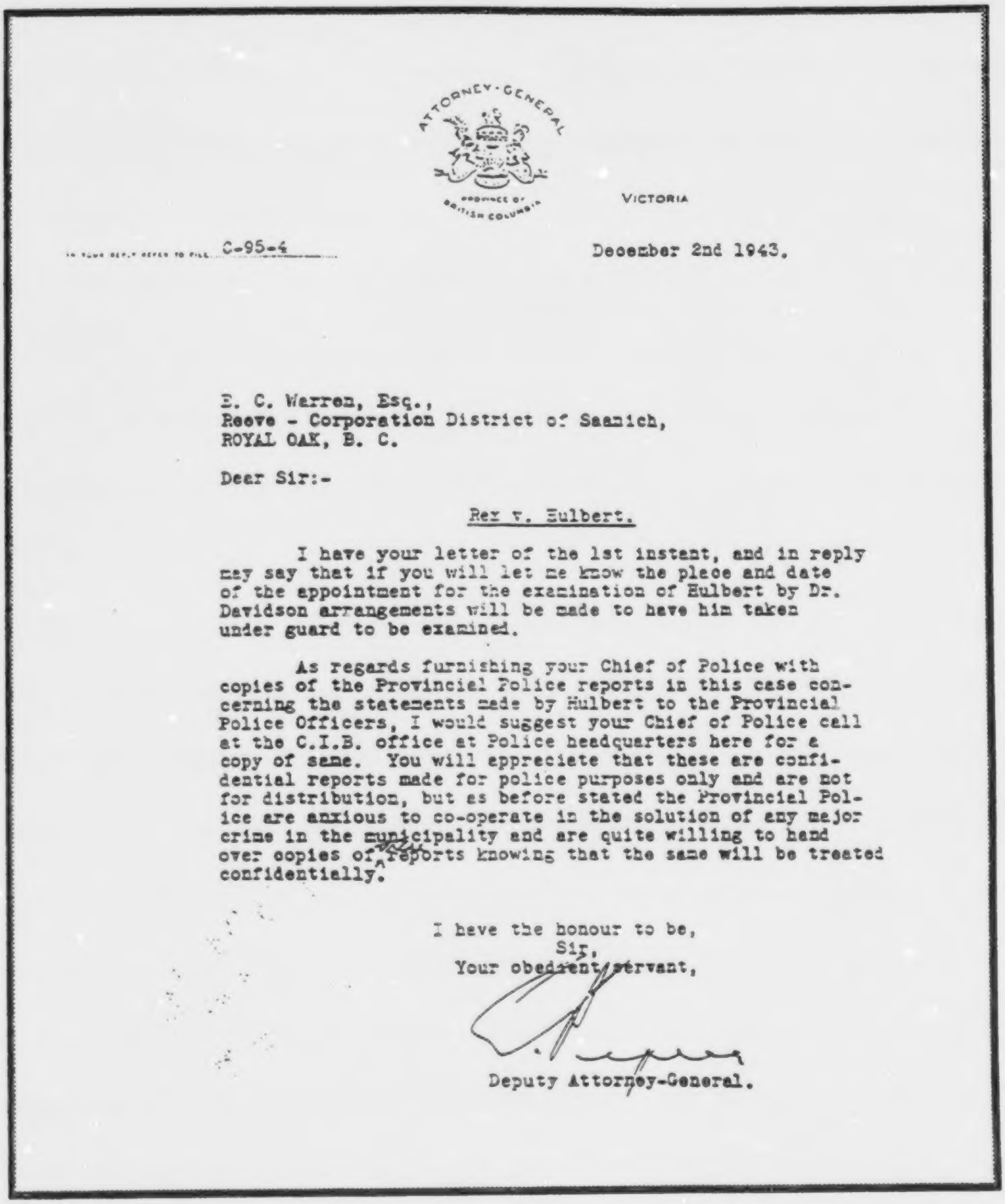
The escorting officers had, of course, reported that what Frank Hulbert told them, as recorded in their reports, was said by Sgt. Elwell *to be already known to him*, before he was told of it by them. He also asked: "What can we do about it?"

I have discovered no evidence of any later involvement of Eric Pepler in the Molly Justice murder investigation. There is a reference in correspondence from the Provincial Secretary's office to Hulbert's release in 1945, but I can attach no significance to this.[31]

(f) Summary

The principal, and I think only, evidence on which, standing alone, an inference adverse to Eric Pepler could possibly be based is his request to Reeve Warren that Hulbert's admissions to the three officers be kept from general distribution. It has to be remembered that if Hulbert had been charged with murder, as may then have seemed possible, the publication of these statements would

ERIC PEPLER'S LETTER



ATTORNEY-GENERAL
PROVINCE OF BRITISH COLUMBIA

VICTORIA

IN YOUR REPLY REFER TO FILE C-95-4

December 2nd 1943.

E. C. Warren, Esq.,
Reeve - Corporation District of Saanich,
ROYAL OAK, B. C.

Dear Sir:-

Rex v. Hulbert.

I have your letter of the 1st instant, and in reply may say that if you will let me know the place and date of the appointment for the examination of Hulbert by Dr. Davidson arrangements will be made to have him taken under guard to be examined.

As regards furnishing your Chief of Police with copies of the Provincial Police reports in this case concerning the statements made by Hulbert to the Provincial Police Officers, I would suggest your Chief of Police call at the C.I.B. office at Police headquarters here for a copy of same. You will appreciate that these are confidential reports made for police purposes only and are not for distribution, but as before stated the Provincial Police are anxious to co-operate in the solution of any major crime in the municipality and are quite willing to hand over copies of these reports knowing that the same will be treated confidentially.

I have the honour to be,
Sir,
Your obedient servant,

Deputy Attorney-General.

This is the letter from Eric Pepler to Reeve Warren, dated December 2, 1943, responding to a request for copies of the reports of Constables Quinn and Lockie.

have been highly prejudicial, and would have attracted censure on anyone responsible for their disclosure. So long as there was a prospect of Hulbert being charged, the caution which Eric Pepler gave to Reeve Warren was on this ground plainly justifiable. It seems certain that Eric Pepler would not have welcomed publicity being given to Hulbert's statement to the officers that they were uncle and nephew, but that does not mean either that it must have been true or that this in itself motivated his caution to Reeve Warren. The statement would be prejudicial if made public, and particularly so if Eric Pepler were not his uncle; if it were untrue and Eric Pepler had to say so publicly, this would add to the prejudicial effect. I must remember that Sgt. Elwell said that the content of the reports *was already known* to him before he heard it from the constables and that Eric Pepler invited the police to obtain copies of these reports, to be used *for police purposes*. I must remember all this when seeking, in light of the evidence as a whole, to put a meaning on Sgt. Elwell's enigmatic and apparently rhetorical question: "What can we do about it?" Did he mean, as proponents of the "cover-up" theory would perhaps believe, that nothing could be done about it because Hulbert was related to the Deputy Attorney General? Or did he mean that nothing could be done about it because the police had satisfied themselves that Hulbert did not commit the murder before they charged Mitchell? Or did he mean that Hulbert's admissions were not believable or would not be believed if given in evidence at trial? There are, perhaps, other possibilities as well.

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Footnotes

1. *1948 Canadian Who's Who*, p. 750; *1955-57 Canadian Who's Who*, p. 857; Ontario Birth Certificate, Eric Pepler (registered February 14, 1891, Barrie); Obituary, *Colonist*, Nov. 17, 1957.
2. *Colonist*, May 28, 1943, p. 11.
3. British Columbia Certificate of Registration of Birth, Francis James Pepler (registered June 21, 1927, Victoria). See Appendix (f).
4. Manitoba Official Notice of Marriage, Thomas Pepler and Mary Jane Cockings (registered June 5, 1919, Portage la Prairie). See illustration, p. 42.
5. Report of Dr. George A. Davidson, Dec. 15, 1943.
6. Telephone interview between Cecil Branson and Frank Hulbert Pepler, July 5, 1988, as recollected by Cecil Branson in interview of July 16, 1996.
7. Interview with Lewis Kamann, July 18, 1996.
8. *Supra* note 5.
9. There are only 46 Peplers listed in all of Canada on the Canphone CD-ROM directory.
10. Report of Constable J. Lockie, Nov. 26, 1943.
11. Notes of Cecil Branson from interview with Det. Robin Stewart, Oct. 5, 1983.
12. Letter from Frank Hulbert to Col. Eric Pepler, Jan. 11, 1944.
13. Census of Canada, 1981 and 1901 (National Archives of Canada, reels T-6368 and T-6497).
14. Telephone interview with Anna Wootton.
15. Interview between Cecil Branson and Jack Gatehouse, as recollected by Cecil Branson in interview of July 16, 1996.
16. Telephone message slip from Elsie Rowlinson to Jack Gatehouse, January 9, 1968.
17. Interview with June Charlton, Aug. 15, 1996.

18. Telephone interview with Jack Clarke, Aug. 14, 1996.

19. *Wrigley's British Columbia Directory 1930* (Vancouver: Wrigley Directories, c. 1930), p. 1852; *Wrigley's British Columbia Directory 1931* (Vancouver: Wrigley Directories, 1931), p. 1848; *Wrigley's British Columbia Directory 1932* (Vancouver: Wrigley Directories, 1931), p. 1831; *Wrigley's Greater Victoria (British Columbia) Directory 1933-1934* (Vancouver: Sun Directories, 1934), p. 251; *British Columbia and Yukon Directory 1935* (Vancouver: Sun Directories, 1935), p. 1879; *British Columbia and Yukon Directory 1936* (Vancouver: Sun Directories, 1936), p. 1667; *British Columbia and Yukon Directory 1937* (Vancouver: Sun Directories, 1937), p. 1581; *British Columbia and Yukon Directory 1938* (Vancouver: Sun Directories, 1938), p. 1634; *British Columbia and Yukon Directory 1939* (Vancouver: Sun Directories, 1939), p. 1616; *British Columbia and Yukon Directory 1940* (Vancouver: Sun Directories, 1940), p. 1834.

20. *Wrigley's British Columbia Directory 1932, ibid.*, p. 1831.

21. *Supra* note 13.

22. Editorial, *Times-Colonist*, June 21, 1996; *Times-Colonist*, June 30, 1996, pp. A1, A4; *Times-Colonist*, July 3, 1996, p. B4.

23. Letter from Reeve E.C. Warren to Attorney General R.L. Maitland, Sept. 24, 1943; Radiogram from Col. Eric Pepler to Maitland, Sept. 29(?), 1943; Radiogram from Maitland to Col. Pepler, Sept. 29, 1943; Letter from Col. Pepler to Reeve Warren, Oct. 1, 1943.

24. *Ibid.*

25. *Ibid.*

26. Letter from Gordon A. Cameron to Col. Eric Pepler, Oct. 29, 1943.

27. Letter from Reeve E.C. Warren to Col. Eric Pepler, Nov. 22, 1943; Report of Constable A.W. Quinn, Nov. 25, 1943; Report of Constable J. Lockie, *supra* note 11; Letter from Col. Pepler to Reeve Warren, Nov. 29, 1943; Letter from Reeve Warren to Col. Pepler, Dec. 1, 1943; Letter from Col. Pepler to Reeve Warren, Dec. 2, 1943. See Appendix (f).

28. Letter from Reeve Warren to Col. Pepler, Nov. 22, 1943, *ibid.*

29. Letter from Col. Pepler to Reeve Warren, Nov. 29, 1943, *supra* note 28.

30. Letter from Col. Pepler to Reeve Warren, Dec. 2, 1943, *supra* note 28.

31. Memorandum from the Deputy Provincial Secretary to Col. Pepler, Nov. 20, 1944. The subject of this memorandum was whether Hulbert ought to be released from Oakalla at that time, given that his one year sentence for the buggery convictions had expired by then, and Hulbert remained imprisoned for an indefinite term for the indecent assault on J.M.

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V. THE SECOND PHASE, 1967-69

(a) The Police Revisit Hulbert

A period of almost 20 years passed between Lewis Kamann's encounter with Frank Hulbert in the Victoria police cell block in 1948 and the next occasion on which police officers spoke with Hulbert about the Molly Justice case.

The immediate cause was an anonymous letter, received by the Vancouver City Police on April 27, 1967, and later forwarded to the R.C.M.P. and Saanich police, which seemed to link the murder of Molly Justice with that of an 11-year-old Squamish, B.C., schoolgirl, killed in May, 1964.[1] The letter has been described as one containing information which would only be known to the killer of Molly Justice, but I have difficulty with this characterization. It contains two clues pointing at the murderer of Molly Justice as someone other than Frank Hulbert. It then suggests that the murderer was "a friend of the man who was charged with the Saanich girl's death", which could include Hulbert, but adds that "he was also a friend of the girl and had kept company with her", which would not seem to include Hulbert. The rest of the letter refers to someone other than Hulbert and to a matter other than the Molly Justice murder.

While the letter does not seem to offer much useful information about the murder of Molly Justice, it provided a reason for the Saanich police to re-open the investigation.

From discussions which he had with Cecil Branson, Q.C.,[2] it is apparent that Det. Sgt. Robin Stewart of the Saanich police had by then for many years been considering taking action on the case. Det. Stewart joined the force in 1950, when it had grown to 10 officers from the 6 or 7 in 1943. In 1956 Police Chief Josiah Bull, who had been in charge of the force at the time of the murder, gave Stewart access to the Molly Justice file, and encouraged him to work on it. Surprisingly, Sgt. Stewart did not find the reports of Constables Quinn and Lockie in the file -- he did not see these, and a number of other documents, until he obtained access to the Attorney General's files, probably in the mid-1960s. Having in mind that Eric Pepler had twice invited Reeve Warren, in November and December, 1943, to have the Saanich police get copies of these reports from the provincial police, it is difficult to explain their absence from the Saanich police file 13 years later. Is it possible that Sgt. Elwell, who said he already knew the information they contained, did not bother to get copies? Or did Eric Pepler change his mind about letting the Saanich police have copies? The latter seems to make little sense, particularly since the content of the reports was stated by Sgt. Elwell to be already known to him.

Det. Sgt. Stewart had the file for at least 10 years before he confronted Hulbert.

It was October 25, 1967, that Det. Sgt. Stewart went with Cpl. William Kerr and Const. Dan Creally of the R.C.M.P. and Det. Ronald Coulter and Det. Norman Baker of the Saanich police to the converted bus in which Hulbert was living at Port Alberni, obtained his consent to search the place and took him to the Port Alberni RCMP station.[3] There they obtained a confession that the evidence he gave at Mitchell's trial was false. He said:

> I lied - it's all lies - Mitchell never told me that he had killed Molly Justice - I didn't like him, so I lied.
>
> • • • • •
>
> I don't know why - I lied - Yes how I lied - I told the guard after I gave my evidence that I had lied. Mitchell didn't kill her.
>
> • • • • •
>
> Yes - nobody told me what I said in court then - I wish I could explain why I gave that evidence in court then - can you tell me?

In response to subsequent police questions Hulbert said he was unable to explain how he knew the details of the murder which he had said he was told by Mitchell if he had not in fact heard them from Mitchell. He said nothing, however, which would amount to an admission either that he *had* killed Molly Justice, or that he *might* have killed her.

The officers obtained a warrant for Hulbert's arrest the next day. They returned on the day after that, October 27, 1967, and arrested him. The warrant charged him with causing public mischief by misleading the Saanich police in 1943 with a false story.[4] This charge was laid, it seems, because the perjury itself had been committed in Victoria, and the Saanich officers were reluctant to charge an offence committed outside their own jurisdiction.

According to notes taken by Mr. Branson of a discussion he had with Det. Stewart almost 20 years later,[5] Hulbert said at the time of his arrest that he "did not have to worry about it because his uncle would look after it"; Mr. Branson thought that Det. Stewart must in fact have said that Hulbert told him he "wished his uncle was still around because he would look after it." When I spoke last month to Cpl. Creally (as I shall call him, although he is now retired from the force) he told me that he heard nothing of this.[6] No such statement is included in the record of the police interview on October 25 or the conversation between the officers and Hulbert when Hulbert was arrested, on October 27. If it was said, it must have been said in Cpl. Creally's absence, and Cpl. Creally not told of it, which seems strange.

I think it possible that the statement in question may have been made by Hulbert at some other time. It was consistent, of course, with the claim he made to the police in 1943. By 1967 Eric Pepler had been dead for 10 years.

(b) The Lindholm Mission

A curious incident occurred when the police party arrived with Frank Hulbert at the Saanich police station on the morning of October 28, 1967, after an overnight stop at Nanaimo--an incident which may, perhaps, never be satisfactorily explained.

Either when the officers arrived with Hulbert or soon afterwards, Victoria lawyer Louis Lindholm was at the police station. There are three versions of the story of which I have heard; all have in common that Mr. Lindholm spoke with Hulbert and advised him that he ought not to speak to the police, or ought not to do so until he had further legal advice, and it appears that Hulbert did not thereafter knowingly assist the police. Accordingly to an account given by Det. Sgt. Stewart in a discussion with Mr. Branson, the officers intended to interview Hulbert further in the hope of obtaining a confession to the murder of Molly Justice. Another report has it that they intended to take Hulbert to the scene of the crime, as they apparently had in 1943, in the hope that he would 're-enact' the crime. Cpl. Creally says that the officers had already completed their questioning of Hulbert before they arrived at the Saanich police station. He says that the advice given by Louis Lindholm could not in fact have done much harm.

What seems to be agreed by the officers involved is that Mr. Lindholm either said, or by silence suggested, that his visit was made on the instructions of someone in the Attorney General's department. Det. Sgt. Stewart told Mr. Branson that Mr. Lindholm arrived 20 minutes after the police party and expressly told him that he said he had received instructions by telephone from the Attorney General's department to go to the Saanich police station and "look after Mr. Pepler's rights." Det. Stewart told Mr. Branson that Hulbert and the lawyer had a half-hour private meeting at the end of which Lindholm said: "Mr. Hulbert wishes to say nothing and does not want to be interviewed." Cpl. Creally told me last month that Mr. Lindholm was at the police station when they arrived, and that he himself asked Mr. Lindholm whether he was acting for the accused and Mr. Lindholm answered "no". Cpl. Creally said he then asked whether Mr. Lindholm represented the Attorney General and got no reply. He says Lindholm told Hulbert through the door: "You don't have to say anything until you speak to a lawyer." Cpl. Creally speculates that someone at the Saanich police office may have telephoned the Attorney General's department when it was learned there that Hulbert was under arrest and was on the way to the police office, and that this was the reason for Mr. Lindholm's presence there.

Last month, Neil McDiarmid, Q.C., who was Director of Criminal Law in the Attorney General's office at the time, stated emphatically to me that he at no time instructed Louis Lindholm to do anything in connection with this case, and that he has no knowledge of anyone else in the Attorney General's department having done so.[7] Dr. Gilbert Kennedy, who was Deputy Attorney General at the time, told me this month that he has no recollection of being involved in dealing with the case in any way, that he would certainly have remembered had he in any case given Mr.

Lindholm instructions of that unusual sort, and that he is satisfied from his lack of any recollection of it that he did not do so.[8]

If the officers are wrong in their recollection of what Mr. Lindholm said, or inference from what he did not say, there are logical explanations for his presence. Hulbert lived in Port Alberni close to his sister, Elsie Rowlinson, who took responsibility for retaining counsel for him at both perjury trials. She could have asked Mr. Lindholm to speak to him in the cells. That would account for Mr. Lindholm stating that he was not acting for Hulbert -- in the sense that he had not been retained to act for him generally -- and declining to say by whom he had been retained for the limited purpose of advising him at the police cells, which would have been a matter of professional confidence. It is possible, too, that Hulbert had phoned his brother and that his brother asked Mr. Lindholm to perform this service.

With authority from the Attorney General's Ministry, I asked Mr. Lindholm's firm whether they could discover if Mr. Lindholm acted for the Attorney General on that occasion, and, if so, to provide me with any documents in their possession relating to the services rendered. The firm no longer has any records relating to the matter.

(c) The 'Undercover' Interview

Soon after he arrived at the Saanich police station Hulbert was put into a cell with an 'undercover' officer who posed as a fellow prisoner and engaged him in conversation.

According to the officer's report, dated October 31, 1967, Hulbert said that he had accused another man of murdering a girl because this man had done something to him and he wanted to get back at him. The officer's report continues:[9]

> He wanted to clear this thing up, he had lied about it. He had been the star witness for the crown because he had said that the other person had killed the girl. I asked him what girl, and he replied "Her name was Molly Justice." He went on to say that the reason he had said this was because he had been picked up for questioning some months after the murder for threatening a young girl with a knife and raping her for which he served time for. It was at this time that he had named this other person for the murder. He was now sorry that he had done this and he wanted to clear this up, as he had lied about the whole thing. Stated he had been in and out of jail a few times. I asked him if he had known the girl, and he replied, No, I have never seen her. He went on to say that he wanted to clear this other man's name and he didn't know really why he had told the lies that he did and that he wished he had been man enough to clean it up before now.

Hulbert went on to say that he thought the police must think that he committed the murder. The report quotes him as saying:

> I think that it is because I knew more about the evidence in court than even they did. Maybe I did do it. It seems to me I must have, because how else would I know so much about it, but I don't remember. It is so long ago, it is hard for me to remember anything about it, but accusing this other man for the murder has been on my mind for a long time. I wish I had been man enough before now and tell the truth.

After lunch the conversation was resumed. The officer's report records Hulbert saying:

> It seems strange that I knew so much about the murder if I didn't do it. This is what has got me worried. Something tells me I must have, and yet I don't think I did. I think maybe if I talk to the police detectives it might all come back to me. I'm not sure whether I did it or not. I just wish I could get it all straightened out, because it bothers me not to know for sure. Maybe if the police took me back over the area again maybe it might all come back to me, maybe I might remember something. I just wish I could remember. I must have done it. Possibly I should try and get hold of the police that were on the case at the time, maybe it will come back to me then. I have only ever loved one girl, and something terrible happened to her. The police must think I did it or know more about it, this is why they arrested me. I just wish I could remember.

After an interval in which Hulbert said he wanted to speak to the detectives, the conversation concluded with Hulbert saying:

> It is awful to think that you might have killed a girl. I guess it can't be much fun to be hooked up with a murder.

Hulbert then asked: "Do the detectives carry guns?" To which the officer replied that they did, and Hulbert said: "Well maybe when they take me out to the railway tracks I should make a run for it and get it over with."

It seems from this final comment that Hulbert was expecting to be taken to the murder scene, as he had been in 1943. I have seen no evidence that this in fact has happened.

(d) The First Perjury Trial

Because Hulbert had been a juvenile at the time of the Mitchell trial, the charge of public mischief on which he was arrested on October 27, 1967, was laid by Det. Sgt. Robin Stewart under the *Juvenile Delinquents Act*;[10] on November 13, 1967, a little over two weeks later, an order was made by Magistrate Henry Hall transferring him to adult court, and on that day Det. Sgt. Stewart swore the Information charging him with perjury.[11]

The perjury charge related not to the trial of Mitchell but to the preliminary hearing held in July 1943. This appears to have been because there was no transcript of the evidence given at the trial and the court reporter at the trial was no longer available.[12] The preliminary hearing had been transcribed, presumably for the use of counsel at trial, and it was thought that this transcript could be used to prove the perjured evidence. In the event, the validity of the preliminary hearing transcript was not established; it had not been certified by the court reporter who made it. The problem was dealt with at the preliminary hearing, in December, 1967, by calling Mr. Justice Coady, who had presided at the Mitchell trial and who recounted Hulbert's evidence from his bench book notes of 24 years earlier.[13] At the trial in February, 1968, before Judge Tyrwhitt-Drake (as he then was), Mr. Justice Coady's evidence relating to the trial was not admitted; counsel and court officials who were actually at the preliminary hearing were called instead.[14] Hulbert was convicted and sentenced to five years imprisonment.[15]

Lewis Kamann was called to give evidence of the admission made to him by Hulbert in the Victoria police cells in 1948 that he had killed Molly Justice but the police would have to prove it.[16] In his charge to the jury, the judge said of the statement to Mr. Kamann: "This could have been frivolous, it could have been serious, its up to you to say". The judge later added: "It seemed to me to be a very spontaneous sort of thing which did not go very far."[17] The statements made by Hulbert to the police at Port Alberni and to the undercover "cell man" were admitted. Hulbert did not testify, and no other evidence was called for the defence.[18]

Hulbert's conviction was appealed on several grounds, including wrongful admission of evidence. The only ground dealt with by the Court of Appeal, in reasons for judgment allowing the appeal given by Mr. Justice Branca on July 19, 1968, was one relating to the sufficiency of the charge regarding corroboration.[19]

(e) Wallace Anderson's View

Between the decision of the Court of Appeal in July, 1968, which set aside Hulbert's conviction and directed a new trial, and the second trial, held in January, 1969, Saanich police consulted J. Wallace Anderson, Q.C., then municipal prosecutor for Saanich and other Victoria area municipalities, as to whether they should charge Hulbert with the murder in the event that he were acquitted of perjury at the second trial.[20]

A witness list had been compiled,[21] probably by Det. Sgt. Robert Stewart, stating the names of those who might testify for the Crown were such a charge to be laid, and their likely evidence. The list includes Victor Smith, a member of the Saanich police force in 1943 who would testify that he arrested Hulbert on May 16, 1943, as he was fleeing from his home on Lurline Street and that he was present, soon after that, when Hulbert led the police to the scene of the murder and told them where Mitchell had said he lay in wait for Molly Justice -- the place where her parcels had been found -- and the place where the body had been found, and then also down a trail to the place where the purse and gloves had been found. The witness list includes: J.M., victim of Hulbert's assault four months after the murder; the officers to whom Hulbert made incriminating statements on the way back to the mainland after the Mitchell trial; Lewis Kamann; the Saanich and R.C.M.P. officers who visited and arrested Hulbert at Port Alberni in October, 1967; and the undercover officer who spoke to Hulbert in the Saanich police cells.

This was not the first time that Det. Sgt. Stewart had urged on Mr. Anderson that Hulbert be charged with the murder of Molly Justice. Mr. Anderson says that he heard from the Saanich police on this subject at least annually from the time he assumed his duties as Victoria regional municipal prosecutor in 1964.[22] He remembers the first visit of Det. Sgt. Stewart to his office for this purpose, when he brought a large number of documents with him; this would have been more than 20 years after the acquittal of William Mitchell. Mr. Anderson says he studied the documents brought by the detective and concluded that there was no basis on which Hulbert could on such evidence then be charged with murder. He repeated this advice on later occasions. At some point, however, he came to the conclusion that a perjury charge might succeed.

Recalling the matter 30 years later, Mr. Anderson says his advice against the laying of a murder charge was based on his belief that a court would not accept the statements by Hulbert about the murder as a reliable confession. The statements were made in circumstances in which it seemed to him that Hulbert might say anything; they were not the statements of someone "dealing with reality". Mr. Anderson saw them simply as statements which Hulbert wanted those to whom he was talking to hear. There were no distinct admissions. He thought a murder charge at that stage was most unlikely to succeed. As to perjury, however, there was the testimony which Hulbert gave, which itself appeared untruthful -- here it would not be necessary to rely on Hulbert's admissions alone. He felt there was a likelihood of "achieving something for Saanich", with a charge of perjury.

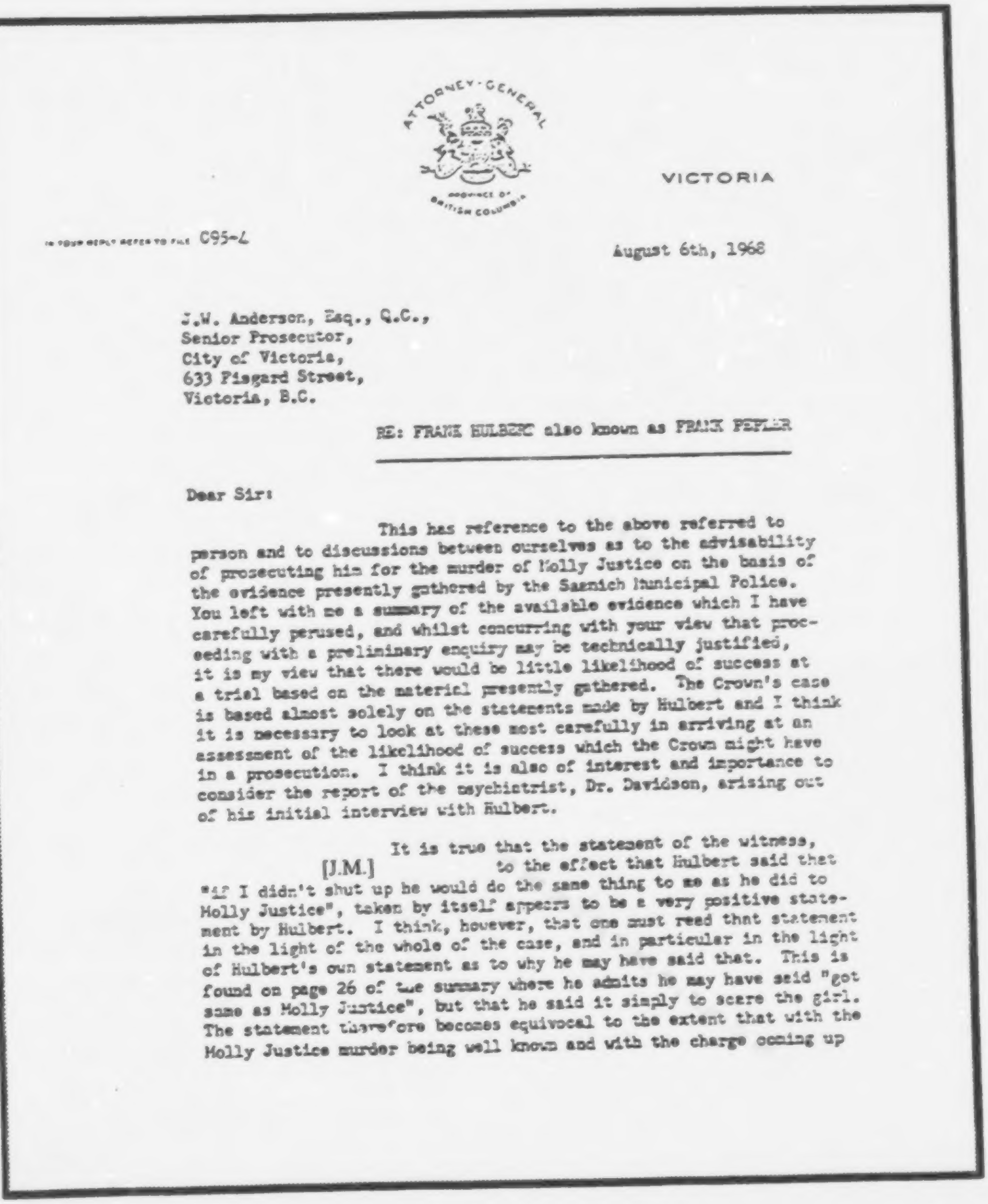
He must have given this advice before the officers went to Port Alberni in October, 1967, perhaps between receipt of the anonymous letter in April, 1967, and that date.

It was in this context that Det. Sgt. Stewart approached Mr. Anderson again in 1968, following the reversal of Hulbert's first conviction for perjury, with the suggestion, as it now seems from the correspondence, that Hulbert be charged with murder in the event that he were acquitted at his second trial. Mr. Anderson at this point decided to seek the advice of the Attorney General's department. He received a letter of August 6, 1968, (see next two pages) which has been the focus of some of the recent media comment.[23]

Mr. Anderson did not generally seek advice from the Attorney General's department on charging decisions, but only when he had unusually difficult problems. In this case he was already acting on the instructions of the Attorney General's department in the higher court proceedings against Hulbert for perjury when the matter was raised. Mr. Anderson said that while he does not understand every point made in Mr. McDiarmid's letter, he agreed generally with the opinion -- it confirmed what had always been his own view.

Mr. Anderson emphatically rejected any suggestion that he was influenced in his decision by a desire to "protect" the Attorney General's department, or by any connection between Hulbert

NEIL McDIARMID'S LETTER



ATTORNEY-GENERAL
PROVINCE OF BRITISH COLUMBIA
VICTORIA

IN YOUR REPLY REFER TO FILE C95-4

August 6th, 1968

J.W. Anderson, Esq., Q.C.,
Senior Prosecutor,
City of Victoria,
633 Pisgard Street,
Victoria, B.C.

RE: FRANK HULBERT also known as FRANK PEPLER

Dear Sir:

This has reference to the above referred to person and to discussions between ourselves as to the advisability of prosecuting him for the murder of Molly Justice on the basis of the evidence presently gathered by the Saanich Municipal Police. You left with me a summary of the available evidence which I have carefully perused, and whilst concurring with your view that proceeding with a preliminary enquiry may be technically justified, it is my view that there would be little likelihood of success at a trial based on the material presently gathered. The Crown's case is based almost solely on the statements made by Hulbert and I think it is necessary to look at these most carefully in arriving at an assessment of the likelihood of success which the Crown might have in a prosecution. I think it is also of interest and importance to consider the report of the psychiatrist, Dr. Davidson, arising out of his initial interview with Hulbert.

It is true that the statement of the witness, [J.M.] to the effect that Hulbert said that "if I didn't shut up he would do the same thing to me as he did to Molly Justice", taken by itself appears to be a very positive statement by Hulbert. I think, however, that one must read that statement in the light of the whole of the case, and in particular in the light of Hulbert's own statement as to why he may have said that. This is found on page 26 of the summary where he admits he may have said "got same as Molly Justice", but that he said it simply to scare the girl. The statement therefore becomes equivocal to the extent that with the Molly Justice murder being well known and with the charge coming up

This (and following page) is the letter from Neil McDiarmid to Wallace Anderson, dated August 6, 1968, advising against laying a charge of murder against Frank Hulbert.

J.W. Anderson, Esq., Q.C.,
Victoria, B.C.

against him shortly thereafter the statement could have the meaning which he ascribed to it. I appreciate that there are other statements of Hulbert which indicate not necessarily that this is what he said, but that if he did say it, or if he did do it, he doesn't remember too clearly. There is his statement that "I may have done it because I was the only one that was there". However, none of these statements constitute a clear and unequivocal admission by Hulbert that in fact he did commit this crime. Accordingly, it becomes rather important to consider the report of Dr. Davidson in which the gist of his conclusion is that Hulbert is a person who tells untruths to create an effect and as such what he says cannot be relied upon. This, together with the equivocal nature of the statements which he has made indicate to me that no charges should be proceeded with against Hulbert, arising out of the alleged murder of Molly Justice.

Another important fact which bears on the question of whether or not to charge Hulbert is the fact that a period of approximately 25 years has elapsed since the death occurred and much of the evidence has been available for this length of time. Coupled with this is the fact that Hulbert has been charged with perjury. If he is ultimately acquitted of this charge, and we then proceed with a charge of murder, the proceedings may well have the appearance of a persecution. I understand that Hulbert practically led the life of a recluse in the Alberni area prior to the charge of perjury being laid against him and that he has been in no trouble with the police during the last ten or fifteen years.

In any event after having given very careful consideration to all the circumstances, I am of the opinion that it would not be advisable to lay a charge of murder against Hulbert in this matter.

Yours very truly,

W.G. McDiarmid
per

W.G. McDiarmid,
Director, Criminal Law

hdd

and the late Deputy Attorney General, or by other extraneous consideration. His concern, he said, was with the sufficiency of evidence offered, and nothing else.

(f) Neil McDiarmid's View

Neil McDiarmid, Q.C. started in the Attorney General's department in 1954, when he was appointed Assistant Departmental Solicitor, became Director of Criminal Law in 1967, was appointed to the newly-created position of Assistant Deputy Minister, Criminal Justice Division, 10 years later, and retired from the department in 1981.[24]

At the time of the letter of August 6, 1968, he would have been in charge of the criminal law division for about a year. He says he believes this to have been his first contact with the Hulbert case. Mr. McDiarmid assumes he was consulted by Wallace Anderson because Mr. Anderson was acting for the Department at that time in prosecuting the perjury charge against Hulbert in the higher courts. Mr. McDiarmid confirmed that his letter represented his own considered view of the matter. Reflecting on the issues from a distance of more than a quarter of a century, he believes his view would have been influenced particularly by the 24-year delay, during which there had been no new evidence of consequence so far as the murder itself was concerned, and by the fact that Hulbert had psychological problems and was a confirmed liar. He thought the police fortunate to have been able, after so long, to put together a solid case on perjury.

In our interview Mr. McDiarmid emphatically rejected the inferences which he felt had been made in recent newspaper articles with respect to the Ministry's involvement in the case at that time. His job, he said, was to ensure that criminal charges did not proceed in the higher courts on inadequate evidence, and that criminal justice was meted out with an even hand. He would never have approved a prosecution simply because the matter was one of high profile. His letter represented his view of the merits of the case, he said, and nothing else.

Mr. McDiarmid said that his opinion, as contained in the letter of August 6, 1968, would have been the same had he been asked to approve a murder indictment after Hulbert had been convicted of perjury, rather than acquitted, which later seems from the letter to have been the hypothesis on which he was in fact consulted.

The factors listed are matters properly considered by prosecuting counsel when making, or advising on, charging decisions. The criticism of Mr. McDiarmid's opinion has concentrated on individual factors mentioned which seem deserving of little weight in the context of the contemplated charge. The letter must, of course, be considered as a whole, after giving greater or lesser emphasis to each factor mentioned, as would experienced counsel. The facts, for instance, that Hulbert posed no danger to the public and that charging him with murder might in the contemplated circumstances take on the appearance of a "persecution", were obviously of lesser importance than other factors mentioned, but they were not, in my view, irrelevant.

(g) The Second Perjury Trial

At the second perjury trial, which started before Judge Ladner and a jury on January 20, 1969, the evidence of the undercover police "cell man" was again admitted, as also was the statement made in 1948 to Mr. Kamann, but the admissions made to the police officers at Port Alberni were not established as voluntary, and were excluded. Hulbert again gave no evidence; the defence again called no witnesses.[25] The judge's charge is not recorded.

Hulbert was again convicted. The sentence imposed was 4½ years, a sentence intended to be the equivalent of five years, taking into consideration time elapsed since the first conviction.[26] Hulbert was probably released on parole in July, 1970.[27]

(h) Summary

There can be no doubt that the incentive to re-open the Molly Justice murder investigation in 1967 came from Det. Sgt. Robin Stewart of the Saanich police and that the triggering event was the anonymous letter of April 27, 1967. Between October 25, 1967, when Saanich police and RCMP officers called on Hulbert at Port Alberni and took his statement, and his arrest two days later, I do not think that legal advice could have been sought as to whether he should be charged with murder. Once the clear admission was obtained from Hulbert, on October 25, 1967, that he lied in his evidence at William Mitchell's trial, the police acted promptly in initiating a prosecution relating to that offence. The question whether he should be charged with murder certainly arose after his first perjury conviction was set aside. It arose in the context of whether he should be charged with murder if he were ultimately to escape conviction for perjury. Mr. Anderson, the municipal prosecutor, had at all times been opposed to the laying of a murder charge, that is to say on the basis of the evidence from 1943 and 1948, and he remained so after Hulbert confessed to perjury. His view was concurred in by Mr. McDiarmid in his letter of August 6, 1968. Since Hulbert was in the end convicted of perjury, the contingency contemplated by that letter did not arise. So far as I have been able to discover, the Saanich police did not thereafter seek approval from prosecuting counsel for a charge of murder against Frank Hulbert.

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Footnotes

1. RCMP Report, Squamish Detachment, May 9, 1967; RCMP Report, Cst. D.G. Creally, June 28, 1967.

2. Interviews between Cecil Branson and Robin Stewart: c. 1982; Oct. 5, 1983; Aug. 12, 1986; Aug. 1, 1991. Recounted to the author by Cecil Branson in interview, July 10 & 11, 1996.

3. Saanich Police Department Report, Oct. 25, 1967. See Appendix (f).

4. Warrant to Apprehend Frank Hulbert alias Frank Pepler, Oct. 26, 1967; Saanich Police Department Report, Oct. 27, 1967. See Appendix (f).

5. Interview between Cecil Branson and Robin Stewart, Aug. 12, 1986, *supra* note 2.

6. Interview with Dan Creally, July 18, 1996.

7. Interview with Neil McDiarmid, July 26, 1996.

8. Interview with Dr. Gilbert Kennedy, Aug. 13, 1996.

9. Memo from William Robertson Crossan to Robin Stewart, Oct. 31, 1967.

10. See Warrant in Appendix (f).

11. See Information above, p. 10.

12. Bench Book of Magistrate Ostler, Hulbert perjury preliminary hearing, Dec. 13-14, 1967; *Times*, Dec. 13, 1967, p. 17; *Colonist*, Dec. 14, 1967, p. 7.

13. *Ibid.*

14. Clerk's notes, first Hulbert perjury trial, Feb. 21-26, 1968.

15. *Ibid.*; *Colonist*, Mar. 5, 1968, p. 1; *Times*, Mar. 5, 1968, p. 17; *Vancouver Sun*, Mar. 5, 1968, p. 1.

16. *Times*, Feb. 23, 1968, p. 7.

17. Transcript of charge to jury, first Hulbert perjury trial.

18. Clerk's notes, first Hulbert perjury trial, *supra* note 14.

19. Reasons for Judgment, *R.* v. *Hulbert*, unreported, July 19, 1968 (B.C.C.A.), per Branca J.A

20. Letter from J.W. Anderson to Robin Stewart, Oct. 24, 1968; Interview with J.W. Anderson, July 25, 1996.

21. Witness list, Saanich Police Department Report, 1968.

22. Interview, *supra* note 20.

23. Letter from Neil McDiarmid to J.W. Anderson, Aug. 6, 1968.

24. Interview with Neil McDiarmid, *supra* note 7.

25. Clerk's notes, second Hulbert perjury trial, Jan. 20-24, 1969; *Colonist*, Jan. 22, 1969, p. 27; *Times*, Jan. 22, 1969, p. 17; *Times*, Jan. 23, 1969, p. 17; *Colonist*, Jan. 24, 1969, p. 19; *Vancouver Sun*, Jan. 24, 1969, p. 33.

26. *Colonist*, Jan. 25, 1969, p. 13; *Times*, Jan. 25, 1969, p. 38; *Vancouver Sun*, Jan. 25, 1969, p. 9; *Vancouver Province*, Jan. 27, 1969, p. 10.

27. RCMP telex, July 17, 1970.

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VI. THE THIRD PHASE, 1996

(a) Marjorie Justice's Protest

Molly's sister-in-law, Marjorie Justice, lives on Swan Street in Saanich, in a house backing onto the lot on Brett Avenue where Molly lived in 1943; Marjorie knew the Justice family at the time of the murder, because she had been going out with Molly's brother Robin since the spring of 1942; they were to become married in 1945.[1]

Robin Justice died in 1976, but Marjorie continued to keep Molly's memory alive. She has an album of photographs of Molly and a collection of newspaper articles on the murder. Until this year the last in the collection was a Denny Boyd article of July 31, 1982 in the *Vancouver Sun*.[2] In March 1996, Marjorie read an article in the *Victoria Times-Colonist* dealing with the newly formed B.C. homicide squad.[3] In the article, Insp. Al Hickman of the Saanich Police was quoted as saying that Saanich has two unsolved murders: Cheri Lynn Smith, in 1990, and Jurgen "George" Finster, in 1969 -- but Molly Justice was not mentioned. Because of the omission of Molly's name from the article, Marjorie Justice became concerned that the police file might have been closed. This prompted her to phone Insp. Hickman to be assured that the file was, in fact, still open.

By coincidence, Frank Hulbert had died on February 17, 1996,[4] less than a month before Marjorie Justice made her phone call to Insp. Hickman.

(b) The 1996 Newspaper Coverage

It was a result of this chance phone call from Marjorie Justice that Insp. Hickman reviewed the Molly Justice file and three months later, in June, 1996, told a newspaper reporter that he was satisfied that Frank Hulbert murdered Molly Justice.

On June 14, 1996, the photograph of Molly Justice appeared once again on the front page of the *Times-Colonist*, together with the heading: "JUSTICE DENIED".[5] The accompanying article includes an account of Inspector Hickman's views on the murder. It also contains statements, based on various sources, to the effect:

- that Frank Hulbert, the murderer of Molly Justice, was the stepson of Col. Eric Pepler, the Deputy Attorney General in 1943;
- that Hulbert was never charged with the assault on J.M.;
- that there had been sufficient evidence to charge Hulbert with the Molly Justice murder, and to obtain a conviction for murder;

- that Hulbert made statements to J.M. and, on three separate occasions, to police officers, in which he confessed to the murder;
- that Eric Pepler interfered with the 1943 investigation in order to prevent charges being laid against Hulbert;
- that Eric Pepler also "got the B.C. Provincial Police involved in what was a local investigation, and then thwarted requests for documents from the reeve (mayor) of Saanich";
- that the struggle to bring Hulbert to justice was again thwarted when Neil McDiarmid, Director of Criminal Law for the Attorney General, decided in 1968 not to charge Hulbert with murder in the wake of his perjury conviction.

On June 17, 1996, J.M. spoke to the newspaper about Hulbert's assault on her and told the reporter that the June 14 story was the first she had heard of a relationship between Hulbert and the then Deputy Attorney General. Her comments, and the fact that she intended to apply for criminal injury compensation, were reported by the *Times-Colonist* in articles on June 18 and 19, 1996.[6] The latter article included an allegation that officials in the Attorney General's office had ensured that Hulbert was not prosecuted for either the Molly Justice murder or the J.M. assault, "apparently because his stepfather was the deputy attorney general."

In an editorial on June 21, 1996, the *Times-Colonist* called on the Attorney General for an inquiry into the Molly Justice case.[7] The editorial emphasized the importance of answering "allegations that high-level political interference and influence were responsible for a blatant denial of justice." Without an inquiry, the editorial also said, Frank Hulbert would remain "a suspect, with no opportunity for any surviving kin to clear his name." The editorial observed that "anyone personally connected with Molly Justice is left feeling that her surname was a mockery of the 'justice' meted out in B.C. all those years ago."

A subsequent *Times-Colonist* article, on June 30, 1996, included an allegation regarding Victoria lawyer Louis Lindholm, who was said to have given advice to Hulbert at the Saanich police station following his 1967 arrest.[8] It reported an interview with Cecil Branson, Q.C., who had been conducting interviews and accumulating documents on the case with a view to writing a book. It appeared from the article that Mr. Branson may have expressed the belief that the Attorney General's department was involved in a "cover-up" in 1943, and also in the late 1960s. But Mr. Branson was quoted as saying: "It is not fair to be judgmental with the evidence I have. Much of it is hearsay, but I do think that it bears some further investigation".

Allegations contained in the June 30 *Times-Colonist* article prompted Donald A. Farquhar, Q.C., a senior partner in Mr. Lindholm's former Victoria law firm, to write to Mr. Branson protesting the suggestion that Mr. Lindholm had been involved in a "coverup".[9] Mr. Branson replied that he had never said that Louis Lindholm was knowingly involved in a "coverup", and that he had not, in fact, concluded that anyone was knowingly involved in wrongdoing.[10]

(c) The Conduct of the Inquiry

In accordance with the terms of reference, I have concentrated this inquiry on questions raised in the recent media reports concerning the Molly Justice case.

I have held no hearings. I have not found it necessary to recommend a formal inquiry under the *Inquiry Act*. I have conducted interviews in person and by telephone with those who seemed to have evidence to offer on matters relevant to the inquiry, and all but one of the personal interviews were tape recorded. Interviews were held in Victoria, Nanaimo and Vancouver. I retained David R. Chamberlin, of Chamberlin Archival Services, to conduct archival research in the B.C. Archives in Victoria and elsewhere. I found his assistance necessary because of the limited time frame and the complexity of the archival research.

I interviewed Cecil Branson, Q.C., on July 10, 11 and 16, and received the benefit of the extensive documentary evidence accumulated by him, as well as his notes of interviews conducted over the last 15 years, some with persons who have since died. Without his assistance the task of reconstructing the central events of the 1940s and 1960s would have been daunting indeed, and probably impossible within the appointed time.

I have concentrated on those areas of inquiry which seemed most likely to prove fruitful. I have not pursued others where to do so would have delayed me in following more promising avenues, without sufficient prospect of useful results. I am aware of the general nature of the documents in the possession of the Royal Canadian Mounted Police but I have been unable, within the time limited, to obtain clearance under the applicable federal legislation for the file to be released to me for copying. From my general knowledge of the content of the R.C.M.P. file I am satisfied that it contains no first-hand information which would add significantly to the information I have been able to accumulate from other sources. I have received shorthand notebooks and some old dictaphone tapes from the Saanich police.

I am informed by the Ministry of the Attorney General that the Ministry has no material documents relating to this case, and that any surviving relevant documents are in the possession of the Provincial Archives in Victoria. Difficulties created by the *Freedom of Information and Protection of Privacy Act*, S.B.C. 1992 Ch. 61, delayed me almost until the end in obtaining access to these archives. Nothing of significance has been found there. A table showing files searched at the Provincial Archives will be found in Appendix (f).

The tapes I received from the Saanich police are"Dictaphone Dictatape" recording belts, probably made during the investigation in the 1960s. Despite extensive efforts I have so far been unable to find a machine on which they can be "played".

(d) Inspector Hickman's Views

Inspector Al Hickman joined the Saanich police force in May, 1968, during the period between the two Hulbert perjury trials; he was not involved in the Hulbert case but later he was to speak with Det. Sgt. Robin Stewart about it on many occasions.[11]

Inspector Hickman's view of the case is straightforward. He is of the view that there was ample evidence in 1968 on which Frank Hulbert could have been charged with murder; he says he has proceeded with murder prosecutions on less evidence and obtained convictions. Insp. Hickman does not share the view, apparently held by Det. Sgt. Stewart, that there was some conspiracy to protect Hulbert. He emphasized that he has never suggested that any impropriety in the handling of the case by the Attorney General's Department in the 1960s. But he disagrees with the advice contained in Mr. McDiarmid's letter of August 6, 1968. The case, he says, was one which in his view ought to have been decided by the courts, not by the Attorney General's department.

At our first interview Insp. Hickman was under the impression that Frank Hulbert had not been convicted of the assault on J.M. He was unaware that Hulbert had been convicted for this, and also four other offences, during the period 1943-47, while Eric Pepler was Deputy Attorney General. Insp. Hickman also believed that Eric Pepler had been unwilling to provide the Saanich police with some, at least, of the provincial police officer's reports of their conversations with Frank Hulbert while being escorted back to the mainland in November, 1943. At our second interview I was able to provide Insp. Hickman with documents which establish that Hulbert was convicted and served time for the assault on J.M. as well as the four other offences mentioned. Insp. Hickman said immediately that the effect of this evidence is definitely to weaken any case that there was some sort of "cover-up" during the 1940s.

My analysis of the correspondence between Eric Pepler and the Saanich authorities does not support the view that Eric Pepler sought to prevent the Saanich police from having provincial police information with respect to Hulbert's statements on the way back to the mainland in 1943. I believe misunderstandings have developed with regard to these matters within the Saanich police force as a result of documents from the police file having left the office in the 1980s. Insp. Hickman's view of the handling of the case by Eric Pepler is that if Eric Pepler had any connection with Frank Hulbert he ought to have avoided involvement in the case. Insp. Hickman emphasizes that he never suggested that Eric Pepler was Frank Hulbert's step-father, but surmised that Hulbert may have been the son of Eric Pepler's brother. Whatever the relationship, the inspector says, Eric Pepler should have stayed away from the case.

Insp. Hickman agrees that those in charge of the police investigation in 1943 undoubtedly believed Frank Hulbert's story that William Mitchell had confessed to him that he murdered Molly Justice -- they were convinced by Hulbert's story. He says that, in his view, the officers overlooked "almost overwhelming" evidence that Hulbert was not telling the truth. Insp. Hickman agrees that there is no evidence that the Saanich police ever wished to charge Hulbert with the murder of Molly Justice during the 1940s.

Insp. Hickman was frank in his approach to the matter. I believe his remaining fundamental concern with this case to be: (i) that he feels that Eric Pepler was in some way related to Frank Hulbert and ought for this reason to have withdrawn from involvement in the case; and (ii) he does not agree with Mr. McDiarmid's view, as expressed in his letter of August 6, 1968, that there was not at that stage a case on which Hulbert should be charged with murder. While Insp. Hickman made references to other of the documents, I do not believe that he meant to suggest that they constitute evidence which would support a charge of actual wrongdoing in the handling of the case during the 1940s. With respect to the handling of the case in the 1960s, he emphasized that he has never suggested there was wrongdoing.

A visitor to the Saanich police station is forcefully reminded of the death of Molly Justice, as those working there must be reminded when they arrive and leave every day. The murder took place just behind the police headquarters. The police station can be seen in the background in one of the photographs (on p. 2) in this report.

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Footnotes

1. Interview with Marjorie Justice, July 25, 1996.

2. *Vancouver Sun*, July 31, 1982, p. A3. Other articles appearing since the 1960's were in the *Victorian*, Jan. 18, 1974, p. 34; and the *Colonist*, Jan. 19, 1980, pp. 1-2.

3. *Times-Colonist*, Mar. 1, 1996, pp. A1, A3.

4. *Times-Colonist*, June 14, 1996, p. A1.

5. *Ibid.*, pp. A1, A6. See also *Vancouver Sun*, June 17, 1996, p. B4.

6. *Times-Colonist*, June 18, 1996, p. A1; *Times-Colonist*, June 19, 1996, p. B3.

7. Editorial, *Times-Colonist*, June 21, 1996.

8. *Times-Colonist*, June 30, 1996, pp. A1, A4.

9. Letter from Donald Farquhar to Cecil Branson, July 8, 1996.

10. Letter from Cecil Branson to Donald Farquhar, July 14, 1996.

11. Interview with Insp. Al Hickman, Aug. 13 & 15, 1996.

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VII. THE CASE AGAINST HULBERT

(a) The Charging Standard

As has been mentioned, there is a significant distinction between the test applied by a police officer in deciding whether he or she is prepared to swear an Information and that applied by Crown counsel in deciding whether a charge ought in fact be prosecuted; this is a difference which inevitably results from time to time in disagreement between police officers and prosecuting counsel when charging decisions are made.

As stated earlier in this report, a police officer who seeks to initiate a prosecution by swearing as Information requires only such knowledge as will provide a reasonable basis for *belief* that the person named has committed a crime, together with actual *belief* to that effect. To secure a conviction, however, the Crown has to satisfy judge or jury *beyond reasonable doubt* that the accused in fact committed the crime. There is a large difference between having a reasonably-based belief in another person's guilt and establishing that person's guilt beyond reasonable doubt to the satisfaction of a judge or jury. But even if Crown counsel believes that a case could probably be established to that high standard, it does not follow that counsel will necessarily conclude that the laying of a charge is therefore warranted.

In deciding whether a charge is warranted, Crown counsel today apply a two-stage test.[1] Firstly, Crown counsel must be satisfied that there is a "substantial likelihood" that the evidence available will satisfy the court of the guilt of the accused beyond reasonable doubt. Secondly, counsel must be satisfied *in addition* that prosecution of the proposed charge would be in the public interest. In applying the first test, Crown counsel must consider not only the Crown evidence and the weight likely to be given to it by the court, but also what the defence evidence will be and what defences may be raised. In dealing with the second test, which applies only where the first passed, counsel must consider all other relevant factors, some of which are mentioned in the Ministry's current policy statement. They include:

(a) the youth, age, intelligence, physical health, mental health, and other personal circumstances of a witness or victim;
(b) the personal circumstances of the accused, including his or her criminal record;
(c) the length and expense of a prosecution when considered in relation to the social benefit to be gained by it;
(d) the need to maintain public confidence in the administration of justice;
(e) the time which has elapsed since the offence was committed.[2]

While the "charging standard" applied today was not contained in an official document at the times relevant to this report, I believe those involved in making charging decisions considered the matter in much the same way. The decision of Crown counsel whether to proceed with a prosecution is judgmental in nature -- it constitutes the first stage in a judicial process the primary purpose of which is to protect the criminal justice system from mis-use and at least to minimize the chance that any miscarriage of justice could occur.

(b) The Case in June, 1943

The strength of the Crown case against Frank Hulbert in June, 1943, lay in the facts: (i) that Hulbert told a false story to the police implicating William Mitchell;[3] (ii) that he threatened 11-year-old J.M. that he would do the same to her as he had to Molly Justice;[4] (iii) that he left work early enough to have had the opportunity to be at the scene of the murder at the time it was committed;[5] (iv) that he seemed to have knowledge of the crime which one would not expect to be known to someone who had not been present when it was committed;[6] and (v) that he was left-handed,[7] as in all probability was the murderer.[8]

Weaknesses of the Crown case at this point included: (i) that the falsity of Hulbert's story of Mitchell's involvement was far from obvious -- the police believed his story, or the Information against Mitchell would not have been sworn;[9] (ii) that Hulbert would say he made the threat to J.M. to frighten her, not because it was true;[10] (iii) that opportunity to be at the scene was something shared by many others; (iv) that Hulbert lived very close to the murder scene, and a careful analysis of the evidence [to be found in Appendix (e)] shows that not everything he said about the murder was true and that the one fact known to him which had not been in the newspapers could have been learned by those in the neighbourhood;[11] and (v) left-handedness is common. The greatest weakness may not, however, have been in the Crown case itself. It may have been in the fact that Hulbert's mother, as she testified at the preliminary hearing and trial of Mitchell, saw Frank come home between 6:30 and 7:00 p.m. that night.[17] Had he committed the murder, he would have had blood on his clothes. If only for the reason that she was not asked the question by Mitchell's counsel in court, it seems reasonable to assume that her evidence would have been that when he returned home Frank was wearing the clothes that he went to work in and there was no blood on them. Mrs. Hulbert's evidence would have been known to counsel. She might have made a good witness -- even though she had an interest in the case -- and it is notable that her evidence as to the time of Frank's return was not as favourable to him as it could have been: it did not exclude the possibility that he could have committed the murder. There may well have been other good reasons to doubt Hulbert's guilt of which we have no record.

It is easy, with hindsight, to say that those in charge of the Saanich police investigation and their advisors erred in excluding Hulbert as a suspect and believing his story about Mitchell's admissions. But they had to make a decision based on the case as it appeared to them at the time, and there is no reason to say that they did not do so conscientiously.

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(c) The Case in November, 1943

Within two weeks of William Mitchell's acquittal -- even, perhaps, while the trial was in progress -- the authorities had reason to believe that Hulbert's story of Mitchell's confession could be untrue, and that Hulbert might, in fact, himself have been the murderer.

Hulbert made inculpatory statements regarding the murder to the Saanich police in this period, and said he had a "foggy" memory with respect to events relating to the crime. He did this, before he was returned to the mainland on November 14, 1943.[13] The inculpatory statements which he made to the escorting officers on the way to the mainland that day may, indeed, have added nothing to what the Saanich police had by then already learned from him. Sgt. Elwell's reaction, as reported by the escorting constables, was to this effect.

By mid-November, 1943, the case against Hulbert would have been strengthened by the admissions he made to the Saanich police and to the escorting officers, but it does not follow that this evidence would have prevailed in court. There is nothing to suggest that he was warned on any occasion. The statements he made on the way to the mainland were in response to some sort of ruse. He was a 16-year-old youth with serious psychological problems, and what he said could obviously have been untrue. The Crown would have faced a considerable challenge in establishing to a jury *beyond reasonable doubt* that Hulbert's story regarding Mitchell's confession was made up for the purpose of covering his own guilt, rather than out of spite against Mitchell, and his statements to the escorting officers undoubtedly truthful, in the absence of physical evidence connecting him with the crime. If he could have committed the murder one would expect this to have been indicated by the hair sample comparison technique already used to exclude members of the Justice household[14] but there is nowhere any mention of this.

The nature of Hulbert's admissions to the police in 1943, like those he was to make to the police "cell man" in 1967, would properly have been treated with caution. The phenomenon of false confession, highlighted in recent years by wrongful convictions for terrorist activities in the United Kingdom, has long been known to those involved in enforcement of the criminal law. It was well known in 1943 as a result of the notorious Lindbergh case, in which false confessions abounded. Wallace Anderson and Neil McDiarmid, experienced prosecutors, were doubtful of the reliability of Hulbert's admissions in 1967, and it may well be that the Saanich police legal advisors expressed the same view in 1943. A 1994 editorial in *The Lancet* deals with the subject under the title Guilty Innocents: the Road to False Confessions.[15] Referring to the rules for admissibility of confessions which had by then been laid down under the United Kingdom *Police and Criminal Evidence Act, 1984*, the editorial observes:

> The new legal framework specifies "reliability" as the essential criterion for admissibility of a confession as evidence, rather than the earlier test of "voluntariness". Strict limits are placed on repeated or lengthy questioning and on interrogation of suspects at night. The police are required to keep a detailed custody record and the process is placed under the supervision of a senior

> policeman known as the custody officer. In certain cases, notably mentally handicapped persons and adolescents, the presence of an "appropriate adult" is mandatory. Thus, it is recognised that certain vulnerable people may make apparently voluntary self-incriminating statements which subsequently can be shown to be erroneous, and that this behaviour is in some way related to the interview technique employed by the police officer.

The editorial goes on to deal particularly with confessions by persons with psychological or intellectual deficits, or mental problems:

> The psychological dimension was emphasized in an early study on miscarriages of justice by Borchard, who found that persuasion or suggestion directed at a suspect of low intelligence by a person in authority was a more potent cause of false confessions than were overt coercion, threats, or violence. Brandon and Davies, who studied 70 cases of "wrongful imprisonment", widened the concept of vulnerability to false confessions; they found that psychological "inadequacy" could induce abnormal susceptibility to suggestion. More specifically, the reliability of statements of people who are mentally ill is especially suspect, since the confession may be related to a delusional belief in a patient with a schizophrenic disorder, or to pathological guilt feelings in a severely depressed individual. A person with mental retardation may make a statement because of a mistaken understanding of the facts or the nature of criminal responsibility.

The tendency of mentally unbalanced individuals to confess falsely in "high profile" cases is also dealt with in this editorial:

> Police officers are well aware that any unsolved criminal case with extensive media coverage can bring about false confessions. Several hundred individuals confessed falsely to the Lindbergh kidnaping. Kassin and Wrightsman suggested that voluntary confessions could be due to a morbid desire for notoriety, to an unconscious need to be punished in order to expiate guilt over previous wrongdoings, or to delusional ideas.

There is "no simple way", the editorial says, "to detect individuals who are vulnerable to the processes leading to false confessions".

While there is no opportunity here to go into the literature on false confessions in depth, it seems clear that the observations contained in recent articles on the subject confirm the views held by counsel experienced in the work of the criminal courts during the period with which we are concerned. Frank Hulbert fits into the class of suspects who are considered to be prone to false confession; so far as the murder of Molly Justice is concerned, his curious admissions would certainly have been looked on with misgiving.

Again, one must wonder what evidence the Crown expected would be given in 1943 on Hulbert's behalf, particularly by Mrs. Hulbert as to his condition when he came home according to her evidence within less than an hour of the murder.

(d) The Case in 1948

Would the Crown case against Hulbert have been significantly strengthened, then, by the statement Hulbert made in the Victoria police cells in 1948 to Lewis Kamann?[16]

That this statement was admitted in 1967 and 1969 at Hulbert's trials for perjury does not mean that it would necessarily have been admitted had he been on trial for the murder. But, assuming that it would have been admitted, it will be remembered that Judge Tyrwhitt-Drake, in charging the jury at the first perjury trial in 1967, emphasized that the statement was a casual remark made in response to an informal question, and could have been made flippantly.[17] A question which this statement raises, as do the reports of the escorting officers in November, 1943, is why Hulbert was not properly warned and formally questioned after making such a statement. The answer may, of course, be that he was formally questioned, and that he then denied the crime, as he had indicated he would, both to the escorting officers and to Lewis Kamann, and that the matter was at that point dropped by the police. We simply do not know.

Because of the circumstances in which it took place, the conversation with Lewis Kamann in 1948 did not, in my view, add materially to the strength of the case against Hulbert as already known to the police five years earlier, in mid-November, 1943.

(e) The Case in 1967-69

What, then, was the strength of the Crown case in 1967, following Hulbert's admission, as a mature adult of 40, that the evidence he gave against William Mitchell was false,[18] and after his statements to the undercover officer in the Saanich police cell?[19]

It seems unlikely anything short of an unequivocal, properly-warned confession would have sufficed at this stage to provide the Crown with a case against Hulbert which had a significant likelihood of conviction on a trial for murder. Hulbert's counsel in the perjury proceedings, John S. Gatehouse, told Cecil Branson that his client vehemently denied having committed the murder.[20] Had he gone into the witness box, Hulbert would have been a poor witness, but it seems he would have denied his prior admissions. The weakness of the Crown case lay in Hulbert's propensity for telling lies, his strange psychological make-up and in the fact that there was no physical evidence connecting him with the murder. That he gave false evidence against William Mitchell did not prove that he committed the murder -- he had an explanation, of course, in his stated intense dislike for Mitchell.[21] But the factor of delay would, in my view, have gone against the Crown had Hulbert been charged with the murder 24 years later. The only evidence the Crown had against Hulbert in 1967 which it did not have in 1943 was his confession to perjury, for which, as I have said, he claimed a motive other than that he committed the murder himself. His equivocal statements in 1967 to the "cell man" were less incriminating than those he made 24 years earlier.

The memory of Crown witnesses would, of course, have been open to attack in 1967. Most important of all, in my view, was the fact that the delay meant that Hulbert was deprived of what may have been his key witness -- his mother had died.

(f) Summary

It seems today that the Crown would certainly have had a case against Hulbert had he, rather than Mitchell, been charged with the murder in 1943. The fact that those in charge of the police investigation believed Hulbert and charged Mitchell suggest that they had some reason to believe Hulbert was not the murderer. I have heard that there were those on the force who did not agree with this decision. I have not heard it suggested by anyone that those in charge of the investigation acted otherwise than honestly in making this decision -- such a suggestion would imply complicity on the part of senior members of the Saanich force in an attempt to convict an innocent man of capital murder. No version of the 'conspiracy' theory that I have heard goes that far. In the absence of any physical evidence linking him to the murder, or a properly 'warned', unqualified and credible confession, the case against Hulbert after 1943 became an increasingly questionable one. When he confessed to perjury, 24 years later, and did not confess to the murder, the case against him on a charge of murder had, in my view, been far more weakened by the long intervening delay than it could have been strengthened by that confession.

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Footnotes

1. British Columbia, Ministry of Attorney General, Criminal Justice Branch, *Crown Counsel Policy Manual*, Charge Approval Guidelines, Ref. BMC Feb. 29, 1996 (see Appendix (f)). See also *Crown Counsel Act*, S.B.C. 1991, c. 10, ss. 4(3)(a), 6(1).

2. *Ibid.* These criteria are listed in the *Policy Manual* as "Additional Factors to be Considered in the Public Interest." The *Policy Manual* also contains separate lists of "Public Interest Factors in Favour of Prosection" and "Public Interest Factors Against a Prosecution". (See Appendix (f))

3. See Chapter III, part (c).

4. See Chapter III, part (b).

5. Evidence of Frank Hulbert and Lewis Kamann, Transcript of Preliminary Hearing *R. v. Mitchell*, pp. 73, 159, 171. Hulbert left work on January 18, 1943, at about 5:15 p.m.

6. This claim does not appear to be well supported by the evidence; a detailed analysis appears in Appendix (e).

7. Provincial Gaol Record of Frank Hulbert, no. 46791.

8. See Chapter III, part (a).

9. See Chapter II, part (a).

10. This is what Hulbert did, in fact, testify at the trial in November. See Bench Book of Coady J., Mitchell murder trial, Nov. 1-3, 1943.

11. Rumours were endemic throughout the period of the investigation of the murder, to the point that Chief Josiah Bull was quoted in the newspaper to say, "Rumor mongers and alarmists are proving a hindrance to the police department by spreading false rumours and malicious stories": *Colonist*, Jan. 28, 1943, p. 5.

12. Evidence of Mary Jane Hulbert, Transcript of Preliminary Hearing, *R. v. Mitchell*, pp. 163-64.

13. See Chapter III, part (e).

14. Letter from T.W.S. Parsons to Attorney General R.L. Maitland, Jan. 27, 1943. See also Chapter III, part (a).

15. *The Lancet*, Vol. 344, No. 8935, p. 1447 (Appendix (f))

16. See Chapter III, part (f).

17. See Chapter V, part (d).

18. See Chapter V, part (a).

19. See Chapter V, part (c).

20. As recollected by Cecil Branson in interview of July 16, 1996.

21. Saanich Police Department report, Oct. 25, 1967; Memo from William Robertson Crossan to Robin Stewart, Oct. 31, 1967.

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VIII. CONCLUSIONS AND RECOMMENDATIONS

(a) The Assault on J.M.

Frank Hulbert was convicted in June, 1943, of sexual assault on J.M. and sentenced to an indefinite term of detention at the Boys' Industrial School in Coquitlam, B.C.[1]

He was soon transferred to Oakalla, an adult prison in Burnaby, B.C., and for this and other offences served a total of at least 2 years, 10 months imprisonment between 1943 and 1947.[2] This was when he was between 16 and 19 years of age and while Eric Pepler was serving as Deputy Attorney General.[3] I have found no evidence that Eric Pepler "covered up" evidence against Frank Hulbert with respect to the assault on J.M.[4] Having in mind the conditions in an adult prison, the sentences he served could not be regarded as unfit -- they would amount to the equivalent today of a court sentence of four to eight years.

While Frank Hulbert was not protected from being charged, convicted and punished for the offence against J.M., the fact remains that his victim has never been compensated. This is not simply because she did not apply but because the *Criminal Injury Compensation Act*, R.S.B.C. 1979, c. 83, provides for compensation only in respect of crimes committed after its enactment in 1972.[5] The decision of the legislature that compensation should be granted only in respect of crimes committed after the enactment of the statute, and not in respect of damages suffered thereafter from crimes committed before that date, was no doubt based in part on a consideration of the likely cost of claims of victims of crimes committed prior to enactment of the statute. At a time of increased public concern for victims of crime, 24 years later, it may perhaps be appropriate to re-weigh the issues involved. The cost today would, of course, be much less.

The victim in this case undoubtedly continues to suffer psychological consequences of the assault. I believe those consequences have been aggravated by the failure to advise her much sooner that her assailant had been punished for it.

(b) The Charge Against Mitchell

It seems obvious today that the Saanich police were wrong in believing that William Mitchell was the murderer of Molly Justice -- the case against him rested on the evidence of a youth with serious psychological problems, who had admitted to the sexual assault of an 11-year-old girl and by the time of Mitchell's trial had been charged with offences against other children.

The error made by the Saanich police has since been blamed on Eric Pepler, Deputy Attorney General of the day. I have found no evidence to support this charge. There is no reason to believe that the Saanich police acted otherwise than conscientiously in reaching the decision to charge

Mitchell. It is to be presumed that the member of the Saanich police force who swore the Information against Mitchell, almost certainly Sgt. Elwell, did so honestly believing Hulbert to be telling the truth. I assume that this represented the view of those in charge of the investigation and their municipal legal advisors, even though others involved may have disagreed. To suggest that the Saanich police charged Mitchell in order to protect Frank Hulbert, who was by then serving a sentence of indefinite detention for sexual assault with a knife, would be to imply that the officers were prepared to have Mitchell hanged for a crime he did not commit in order to shield another convicted violent offender. There is no evidence of this. I have not heard any version of the 'conspiracy' theory which includes so preposterous a charge.

In the absence of evidence to the contrary, I conclude that the Saanich police made an honest error of judgment in deciding to charge William Mitchell. I have seen nothing to suggest that Eric Pepler played any part in that decision.

(c) Failure to Charge Hulbert, 1943-48

I turn, then, to the question whether improper influence was brought to bear on the Saanich police authorities to prevent them laying a charge of murder against Frank Hulbert after the acquittal of Mitchell in 1943, and up to and including the time when Hulbert made his inculpatory statement to Lewis Kamann in the Victoria police cells, in 1948.

The only basis on which it might be asserted that an inference of impropriety could be founded in regard to the failure to charge Hulbert with murder during this period is the fact that the reports of the escorting constables recording his inculpatory statements on the way back to the mainland were not found in the Saanich police files by Detective Sgt. Robin Stewart, 20 years later, and that Eric Pepler in his letter to Reeve Warren asked that they be treated confidentially and not generally distributed.[6] I am unable to draw an adverse inference from this evidence. Eric Pepler 's letter, like his earlier letter to Reeve Warren,[7] contained an invitation to the Saanich police to obtain copies of the reports. The request that they be used "for police purposes only" can readily be justified by the prejudicial effect which publication of these reports would have had on a subsequent trial of Frank Hulbert. The suggestion that by seeking to restrict use of the reports to police purposes Eric Pepler was "covering up" evidence against Hulbert is not, in my view, sustainable. If the Saanich police did not pick up copies of the reports when twice invited to do so, or later took them out of the Molly Justice file, that could not, on the evidence I have seen, be blamed in any way on the Deputy Attorney General, Eric Pepler.

I am aware of no evidence that the Saanich police ever in fact wished to charge Frank Hulbert with the murder of Molly Justice prior to Det. Sgt. Robin Stewart's involvement in the case, which started in the late 1950s.

(d) Failure to Charge Hulbert, 1967-69

I have discovered no basis on which it could be said that evidence tending to show Frank Hulbert to be guilty of the murder of Molly Justice was in any way "covered up" during the period 1967-69, or that there was impropriety on the part of anyone involved in the decision not to charge him with that crime during this period.[8]

Mr. Branson has made it clear that he did not intend to make any such allegation. Inspector Al Hickman, the other person quoted in the recent newspaper stories on the case, made it equally plain to me in our interview this month that he has made no such allegation. At the time when the Attorney General's department became involved in advising on the possibility of a murder charge being laid, between Hulbert's two perjury trials, Eric Pepler had been dead for 10 years. If an error was made during the 1940s, in charging William Mitchell rather than Frank Hulbert and in failing to charge Frank Hulbert after William Mitchell was acquitted, there is no evidence that this had anything to do with the Attorney General's office. I have found no justification for the suggestion that the Attorney General's office, 24 years later, had reason to wish to conceal any such mistake, nor that it did anything intended to have that result.

I can find no basis on which impropriety could be attributed to anyone involved in the decisions made during the 1960s not to charge Frank Hulbert with murder.

(e) Louis Lindholm's Visit

The suggestion that Louis Lindholm, Q.C., was instructed by the Attorney General's department to interfere in the Saanich police investigation by warning Hulbert against assisting them appears to originate from inferences drawn by the late Det. Sgt. Robin Stewart. Det. Sgt. Stewart was a dedicated police officer who became convinced that there was a conspiracy. I believe his judgment and his recollection of events may have been affected by this conviction. Cpl. Creally's account, which I accept, is that Mr. Lindholm never said by whom he had been asked to speak to Hulbert. I believe the police, influenced no doubt by Det. Sgt. Stewart's view, inferred that it was the Attorney General's department. There are more likely explanations involving no impropriety. I am not persuaded that Mr. Lindholm's visit was made on behalf of the Attorney General's department, and can attach no improper motive to it.

(f) Should Hulbert Have Been Charged?

I have said that the evidence available does not support an inference of impropriety against those involved in the charging decisions which were made in this case, either during the 1940s or during the 1960s; I am asked by the terms of reference to decide also "whether Frank Hulbert *should* have been charged with the murder of Molly Justice".

I have set out the strengths and weaknesses of the case against Hulbert as I understand them, at each relevant point in the history of the case.[9]

I think it likely that most police officers reviewing the evidence today would conclude, as does Insp. Hickman, that there were at each point reasonable grounds to believe that Frank Hulbert murdered Molly Justice. We know that Det. Sgt. Robin Stewart firmly held that belief 30 years ago, and no doubt did so up to his death, two years ago. But the question whether Hulbert *should* have been charged at any point requires an application of the appropriate charging standard to the facts of the case as they would have been known at the time.

We do not, of course, know everything that was known to those involved in the case at each stage. In particular we do not know all that was known to the police in the 1940s.

I cannot say that there were no valid reasons for failing to charge Hulbert before and after the acquittal of Mitchell in 1943 and after his statement to Mr. Kamann in 1948; I have dealt with those matters in the preceding chapter. There were, in my view, good grounds in 1967 for not charging him with the murder, the most important being the delay of 24 years, something which could well have deprived him of the opportunity, to which he was entitled in law, to make full answer and defence to this grave charge.

I cannot say that Hulbert ought to have been charged with murder.

(g) Should Eric Pepler Have Withdrawn?

If Eric Pepler had any sort of connection with Frank Hulbert, it would, of course, have been desirable that he not be involved in the handling of the case.

The law tells us that justice must not only be done but manifestly seen to be done. But the law tells us also that it is not more important that justice appear to be done than done in fact. Under today's conditions those in the Attorney General's office would be able to remove themselves without difficulty from involvement in any case where their involvement could create an appearance of impropriety or conflict of interest. We cannot, however, assume that in 1943 Eric Pepler, who bore the responsibility for criminal work within the Attorney General's office virtually alone, had that option. This was during the war, when civilian departments had to get by with minimal staff and public priorities were re-ordered. Assuming, as I do, that any connection he had with Frank Hulbert was not a close one, I cannot say that Eric Pepler should be faulted for remaining at his post, rather than stepping back and leaving the case to others, that is to say to a junior solicitor, or to a cabinet minister burdened with political responsibilities.

Had he taken that course, it may be that Eric Pepler's reputation would not have suffered, as it has, 53 years later. That is not, in my view, a ground for saying that he ought to have taken that course in the circumstances which prevailed in Canada in 1943.

(h) The Position Today

The procedure now in place under which a police officer dissatisfied with a decision of local Crown counsel against the laying of a charge may appeal that decision to regional Crown counsel, and if need be to the Assistant Deputy Minister responsible for criminal justice and the Deputy Attorney General, seems to me adequate to ensure that a similar dispute between police and prosecuting counsel over a charging decision would be properly resolved today.

Insp. Hickman of the Saanich police does not suggest that the appeal process is inappropriate or inadequate. The objection which he takes to the present charge-approval system is not that the decision-making process is arbitrary or lacks what might be described as accountability, but that the standard applied by Crown counsel is too demanding. He would like to see more cases decided in court and fewer by Crown counsel. I have no mandate to deal with that broad issue. I can say only that I do not believe that the frustration which was felt by Det. Sgt. Robin Stewart in the 1960s, resulting from his disagreement with the advice he received from the Victoria-area municipal prosecutor and Attorney General's department against charging Frank Hulbert with murder, would be felt today by a police officer in his position who had the opportunity to challenge such a decision through the present formal appeal process.

I believe that Det. Sgt. Stewart's unresolved frustration, resulting from that disagreement, has been the principal cause of the controversy which led to this inquiry.

(i) Document Management

In dealing with the charges on which I have been asked to report, the Ministry of the Attorney General has been severely handicapped by the fact that it has not had access to relevant documents. Its files have either been destroyed or transferred to the Provincial Archives. Those sent to the Archives were withheld from access for the present purpose almost until the end of my work because of difficulties created by freedom of information legislation. The Ministry should review its records management policy. The Ministry should not allow documents relating to an unsolved murder case to be destroyed *or* to pass out of its control. The demand for accountability in government requires that documents relating to matters of any potential public concern be carefully indexed and stored under the Ministry's control indefinitely, so as to be available on short notice in the event that the conduct of the Ministry is called into question. It would also be desirable that regulations be enacted under the freedom of information legislation expressly authorizing the use of documents in the Provincial Archives for an inquiry such as the present.

(j) Supplementary Report

In the event that it proves possible to play the "Dictaphone Dictabelt" tapes provided to me by the Saanich police, and further information is thereby discovered which would affect any of the above conclusions, or should I have reason to reconsider these conclusions in light of information from any other source, a Supplementary Report will be provided

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Footnotes

1. See Chapter III, part (c).
2. Provincial Gaol Records, nos. 46791 and 51255. In total, it appears that Hulbert served from June 3, 1943, until June 2, 1945, for the indecent assault of J.M. and for the three buggery convictions; he subsequently served from Mar. 4, 1946, until Jan. 11, 1947, for contributing to juvenile delinquency.
3. Frank Hulbert was born on June 13, 1927. Eric Pepler was Deputy Attorney General from Oct. 30, 1934, to Aug. 1, 1954.
4. See Chapter IV.
5. *Criminal Injury Compensation Act*, R.S.B.C. 1979, c. 83, s. 25.
6. Letter from Eric Pepler to Reeve Warren, Dec. 2, 1943.
7. Letter from Eric Pepler to Reeve Warren, Nov. 29, 1943.
8. See Chapter V.
9. See Chapter VII.

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IX. A LAST WORD

Where, when and by what means Molly Justice met her death have all long been well established, but it seems unlikely now that anyone will ever be able to say with certainty who it was that murdered her, and why her murderer was never punished.

To the extent that important facts concerning the case have recently been mis-stated, and that there seems to have been fundamental misunderstanding of the process by which the criminal law was enforced in this province at the relevant times, it is to be hoped that this report may cast some new light on the case. It is to be hoped, also, that the report will bring forward those who may have information which would fill some of the evidentiary gaps, or correct any error to be found in my account of the facts of the case.

There is, however, a dispute within and outside the law enforcement community which this report can do little to resolve.

The controversy is between those involved in police work who have daily contact with victims and potential victims of crime, on the one hand, whose first concern will necessarily be the conviction and punishment of wrongdoers, and those, on the other hand, who represent the Crown in the courts and whose first duties will always be to ensure that the criminal justice system is not mis-used, that prosecutions are conducted with scrupulous fairness, and that everything is done which can be done to guard against the possibility of miscarriage of justice.

For this purpose a series of safeguards has been developed within our system of criminal justice, of which the first is the charging decision. There could be no better example of its importance than that furnished by the prosecution of William Mitchell for the murder of Molly Justice. The jury had only three days to discover a grave error made by the Saanich police after five months of close association with the case. Had Frank Hulbert been a more persuasive witness, and Lewis Kamann not been available to testify for the defence, William Mitchell might well have hanged for a crime he did not commit. For this not simply Frank Hulbert but the community as a whole would have borne the responsibility.

Before saying today that we believe on reasonable grounds that Frank Hulbert murdered Molly Justice we would do well to remember that those responsible for the Saanich police investigation said the same thing of William Mitchell, 53 years ago.

M.R. Taylor

August 31, 1996

X. APPENDICES

(a) The Terms of Reference

Province of
British Columbia

OFFICE OF THE
DEPUTY ATTORNEY GENERAL

Telephone: (604) 387-5211
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11th Floor
1001 Douglas Street
Victoria
British Columbia
V8V 1X4

July 3, 1996

Hon. Martin R. Taylor, Q.C.
800 Park Place
666 Burrard Street
Vancouver, B. C.
V6C 2Z7

Dear Mr. Taylor:

Re: Molly Justice

Thank you for agreeing to conduct an independent investigation into the case of Molly Justice, who was murdered in Saanich in 1943. Without limiting your flexibility to look into and report on any and all aspects of this case, the two major issues at this stage appear to be whether (1) Frank Hulbert should have been charged with the murder of Molly Justice or the sexual assault of [J.M.] and (2) the Deputy Attorney General in 1943, Eric Pepler, or anyone else covered up evidence on behalf of Hulbert.

Background

* fifteen year old Molly Justice was murdered on January 18, 1943 near the Swan Lake area at Saanich in Victoria, B.C.;

* William Mitchell was tried for the murder and acquitted in the Fall of 1943;

* Molly died from wounds caused by a small knife and it is not known whether blood stained clothing and parcels she was carrying have been retained by the courts after having been entered as exhibits on the Mitchell trial;

* it has been alleged that the murder was actually committed by fifteen year old Frank Hulbert;

- both Mitchell and Hulbert are dead;
- Inspector Hickman of the Saanich Police indicates that the case against Hulbert can be summarized as including up to four statements which he made to various persons admitting the murder and the evidence of a subsequent victim [J.M.] ;
- [J.M.] is still alive however it is not known whether the persons to whom the four statements were made are still alive;
- on May 16, 1943 in the Swan Lake area [J.M.] was raped at knife point by a person she identified as Frank Hulbert who said words to the effect that she should co-operate or he would do the same as he had done to Molly Justice. The strength of identification evidence is not known at this time. Hulbert was apparently never charged with the assault on [J.M.]
- on March 4, 1968 Hulbert was convicted of perjury in connection with his testimony against Frank Mitchell;
- in 1968 Victoria City prosecutor Wally Anderson reportedly recommended to Neil McDiarmid, the Director Criminal Law, that Hulbert could be prosecuted. Neil McDiarmid reportedly wrote back to Mr. Anderson that while the evidence seemed to be sufficient, a prosecution should not proceed in view of the perjury prosecution and an appearance that Hulbert might be subject to "persecution" - this is from a verbal report as to the contents of Neil McDiarmid's 1968 letter to Anderson provided by Inspector Hickman;
- newspaper articles allege that the Deputy Attorney General in 1943 covered up the guilt of Hulbert who was his stepson - Inspector Hickman indicates that in fact Hulbert was a nephew of the Deputy Attorney General. It is not known what information still exists on the issue of possible interference;
- the Saanich Police hold a fairly extensive file in this matter;

- the Criminal Justice Branch holds no file material and inquiries with B.C. Archives have proven fruitless although there are indications that some file material may be found with a more extensive search;
- all of the above background facts are based on the newspaper reports and information received from Inspector Hickman and may not be entirely accurate.

Please find enclosed various, recent newspaper clippings dealing with this issue.

While we can define your terms of reference more precisely once you have had the opportunity to consider and advise on what is possible and necessary given the available evidence and historical nature of this case, I confirm the following preliminary points:

1) The investigation and report will be completed by the end of August 1996;

2) It is intended that your report be made public;

3) You will be interviewing all those still living who have direct knowledge of the circumstances and reviewing all relevant documents. While there is no indication that anyone would withhold information from you, should it be necessary to subpoena evidence then this power will be provided to you under Part I of the *Inquiry Act*.

I appreciate your willingness to be involved in this important case.

Sincerely,

Stephen Owen

Stephen Owen, Q.C.

Enclosures

(b) The People Involved

The Victims

Anneta Margaret ("Molly") Justice	15 year old victim of murder, on the CNR right-of-way in Saanich, on January 18, 1943.
J.M.	11 year old victim of indecent assault, beside Swan Lake in Saanich, on May 16, 1943.

The Suspects

Francis J. Hulbert	(Also known as Frank Pepler.) Convicted of the indecent assault of J.M. Suspected of the murder of Molly Justice, but never charged.
William Mitchell	Acquitted of the murder of Molly Justice in November 1943.

The Justice-Martins

Muriel Justice	Mother of Molly Justice.
Marjorie Justice	Sister-in-law of Molly Justice. Married Molly's brother, Robin, in 1945.
Robin Justice	Brother of Molly Justice.
D'Arcy Martin	Lived with Muriel Justice at the time of the murder. D'Arcy Martin and Muriel Justice would later marry.
Patrick Martin	Son of D'Arcy Martin; lived in the Justice household at the time of the murder.

The Hulbert-Peplers

Mary Jane Hulbert	Mother of Frank Hulbert. Born Mary Jane Cockings, it appears that she first married to Thomas Pepler (Frank Hulbert's father) and was widowed, and later married Cresswell Hulbert (Frank Hulbert's step-father).
Cresswell Hulbert	Step-father of Frank Hulbert.
Thomas Pepler	Father of Frank Hulbert, deceased prior to 1943. (Sometimes referred to as John Thomas Pepler.)
John Thomas Pepler	Older brother of Frank Hulbert.
Elsie Rowlinson	Sister of Frank Hulbert. Living in Port Alberni in the late 1960s.

The Legal System – 1943-48

Gordon Cameron, K.C.	Retained as prosecutor for the murder trial of William Mitchell.
The Hon. J.M. Coady	Judge presiding over the murder trial of William Mitchell.
Magistrate Henry C. Hall	Magistrate presiding over preliminary inquiry for William Mitchell.
Claude Harrison	Victoria lawyer, retained as prosecutor in 1943 to advise Saanich police. Acted as prosecutor (with Ernest Tait) at the preliminary inquiry for William Mitchell.
The Hon. R.L. Maitland, K.C.	Attorney General, 1941-46.
Eric Pepler, K.C.	Deputy Attorney General, 1934-54.
Patrick J. Sinnott	Defence counsel for William Mitchell at preliminary hearing and trial.
Ernest Tait	Saanich municipal solicitor in 1943; advised Saanich police. Acted as prosecutor (with Claude Harrison) at the preliminary inquiry for William Mitchell.

The Legal System -- 1967-69

J. Wallace Anderson, Q.C.	Senior prosecutor in Victoria. Advised the Saanich Police on the decision whether or not to charge Hulbert with murder in 1968. Acted as prosecutor at both perjury trials.
John Gatehouse	Defence counsel for Hulbert at both perjury trials.
Dr. Gilbert Kennedy, Q.C.	Deputy Attorney General, 1957-73.
His Honour Judge G.B. Ladner	Judge presiding at Hulbert's second perjury trial.
Louis Lindholm, Q.C.	Victoria lawyer. Advised Hulbert while he was in custody in Saanich, in October 1967.
Neil McDiarmid, Q.C.	Director of Criminal Law, Ministry of Attorney General. Wrote letter to J.W. Anderson, on August 6, 1968, advising that Hulbert ought not to be charged with murder.
His Honour Judge M.L. Tyrwhitt-Drake	Judge presiding at Hulbert's first perjury trial.

The Police -- 1943-48

Josiah Bull	Chief of Saanich Police.
Eric C. Elwell	Sergeant, Saanich Police. Officer in charge of the murder investigation. Present with Victor Smith and fireman Arthur Logie when Molly Justice's body found. Together with Victor Smith, took Hulbert to the murder scene on May 17, 1943.
Lewis Kamann	Co-worker of Frank Hulbert and William Mitchell at British America Paint Co. in 1943; defence witness at Mitchell's murder trial. Victoria City Police officer in 1948; encountered Hulbert while he was in custody.
Jack Lockie	Constable, Victoria Highway Patrol, B.C. Provincial Police. Escorted Hulbert to the mainland on November 14, 1943.
T.W.S. Parsons	Commissioner of B.C. Provincial Police.
A.W. Quinn	Constable, Sooke Detachment, B.C. Provincial Police. Escorted Hulbert to the mainland on November 14, 1943.
Victor Smith	Member of Saanich Police Department. Present with Sgt. Elwell and fireman Arthur Logie when Molly Justice's body found. Arresting officer of Frank Hulbert on May 16, 1943. Together with Sgt. Elwell, took Hulbert to murder scene on May 17, 1943.
John F.C.B. Vance	Vancouver Inspector of Police and criminologist. Analysed hair samples in murder investigation.
E.C. Warren	Reeve and Chairman, Saanich Police Commission.

The Police – 1967-69

Norman Baker	Detective, Saanich Police. Member of the party which went to Port Alberni in October 1967 to apprehend Hulbert.
Ronald Coulter	Detective, Saanich Police. Member of the party which went to Port Alberni in October 1967 to apprehend Hulbert.
Daniel Creally	Constable, RCMP, Victoria. Member of the party which went to Port Alberni in October 1967 to apprehend Hulbert.
William Crossan	Constable, Saanich Police. Posed undercover while Hulbert was in custody on October 28, 1967.
William Kerr	Corporal, RCMP, Nanaimo. Member of the party which went to Port Alberni in October 1967 to apprehend Hulbert.
Robin Stewart	Detective Sergeant, Saanich Police. Member of the party which went to Port Alberni in October 1967 to apprehend Hulbert. In charge of the Hulbert case in the late 1960s.

The Police – 1996

Al Hickman	Inspector, Saanich Police. Reopened the Molly Justice case in March.

Others

Dr. George Davidson	Psychiatrist. Examined Frank Hulbert on December 4, 1943.
Dr. E.C. Hart	Coroner. Conducted Molly Justice inquest in January 1943.
Arthur Logie	Fireman. Discovered the two parcels belonging to Molly Justice on the night of the murder, and notified police. Present with Sgt. Elwell and Victor Smith when Molly Justice's body found.

(c) A Chronology

The First Phase

Jan. 18, 1943	Murder of Molly Justice. Body discovered by Sgt. Eric Elwell and Victor Smith of the Saanich Police, and fireman Arthur Logie.
Jan. 25, 1943	Search of the Justice household by Saanich Police.
Jan. 29, 1943	Coroner's inquest.
May 16, 1943	Indecent assault of J.M. Frank Hulbert is arrested at his home on Lurline St., by Victor Smith of the Saanich Police.
May 17, 1943	Sgt. Eric Elwell and Victor Smith take Hulbert to visit murder scene.
June 3, 1943	Frank Hulbert is convicted of the indecent assault of J.M., and sentenced to an indefinite term at the Boys' Industrial School.
June 5, 1943	Search Warrant obtained by Sgt. Elwell, to search the premises occupied by William Mitchell at the logging camp in Youbou.
June 10, 1943	Hulbert is committed to Boys' Industrial School in Coquitlam.
June 12, 1943	Hulbert provides written statement to Saanich Police, implicating William Mitchell in the murder.
June 15, 1943	Search Warrant obtained by Sgt. Elwell, to search the room of William Mitchell on Johnson St., in Victoria. William Mitchell is apprehended by Sgt. Elwell.
June 16, 1943	William Mitchell is charged with a "statutory offence".
June 17, 1943	William Mitchell is charged with the murder of Molly Justice.
June 21, 1943	Statutory offence charge against Mitchell is withdrawn.
July 2-8, 1943	Preliminary hearing for William Mitchell murder charge, Magistrate Henry C. Hall presiding. Defence counsel is Patrick Sinnott; prosecutors are Claude Harrison and Ernest Tait. Mitchell is committed for trial.
July 16, 1943	Hulbert enters Boys' Industrial School.

Aug. 5, 1943	Hulbert is transferred from Boys' Industrial School to Oakalla, by Order in Council.
Sept. 21, 1943	Letter from the Board of Police Commissioners to Attorney General Maitland, advising that Claude Harrison could not be granted a leave of absence to represent the Crown at the Mitchell trial, as requested.
Sept. 22, 1943	Letter from Claude Harrison to Attorney General Maitland, recommending that the Mitchell trial be traversed until the Spring Assizes in order to locate an important witness ("Harry") who had been alleged to exist.
Sept. 22, 1943	Letter from Attorney General Maitland to the Saanich Municipal Clerk, expressing his "surprise" that Claude Harrison would be unavailable for the Mitchell trial.
Sept. 23, 1943	Letter from Attorney General Maitland to the Board of Police Commissioners, acknowledging the Board's refusal to grant a leave of absence to Claude Harrison.
Sept. 24, 1943	Letter from Reeve Warren to Attorney General Maitland, recommending that the Mitchell trial be traversed until the Spring Assizes in order to locate "Harry". (See Sept. 22 letter from Claude Harrison, above.)
Sept. 24, 1943	Letter from Attorney General Maitland to Reeve Warren, advising that the conduct of the Mitchell prosecution is "entirely in the hands of Mr. Eric Pepler, K.C., Deputy Attorney-General".
Sept. 29, 1943	Exchange of radiograms between Eric Pepler and Attorney General Maitland. Pepler advises, with regard to the Mitchell trial: "do not now want to take this case for various reasons and feel strongly that other counsel be appointed".
Oct. 1, 1943	Letter from Eric Pepler to Reeve Warren, advising that Pepler was unable to act as prosecutor for the Mitchell trial, and that Gordon Cameron had been retained for that purpose.
Oct. 29, 1943	Letter from Gordon Cameron to Eric Pepler, confirming Pepler's instructions to proceed with the Mitchell trial and not to apply for a traverse.
Oct. 29, 1943	Hulbert is escorted to Victoria, to act as a witness at the Mitchell trial.
Nov. 1-3, 1943	Murder trial of William Mitchell, Judge J.M. Coady presiding. Defence counsel is Patrick Sinnott; prosecutor is Gordon Cameron. William Mitchell is acquitted.

Nov. 14, 1943	Hulbert is escorted to Oakalla by Constables A.W. Quinn and Jack Lockie of the B.C. Provincial Police. Hulbert makes a statement regarding the Molly Justice murder.
Nov. 22, 1943	Letter from Reeve Warren to Eric Pepler, referring to Hulbert's statement to the Provincial Police officers, and advising that Sgt. Elwell was making arrangements for Hulbert to be examined by Dr. George Davidson to determine whether the "fogs" he referred to were genuine.
Nov. 25, 1943	Report of Provincial Police Constable A.W. Quinn.
Nov. 26, 1943	Report of Provincial Police Constable Jack Lockie.
Nov. 29, 1943	Letter from Eric Pepler to Reeve Warren, advising that the Provincial Police would co-operate with Saanich Chief of Police Josiah Bull and would make copies of the reports of Constables Quinn and Lockie available if requested to do so.
Dec. 1, 1943	Letter from Reeve Warren to Eric Pepler, requesting copies of the reports of Constables Quinn and Lockie, and advising that the examination of Hulbert by Dr. Davidson would be proceeded with.
Dec. 2, 1943	Letter from Eric Pepler to Reeve Warren, advising that Chief of Police Bull should contact the C.I.B. office for a copy of the reports of Constables Quinn and Lockie, and noting: "You will appreciate that these are confidential reports made for police purposes only and are not for distribution, but as before stated the Provincial Police are anxious to co-operate in the solution of any major crime in the municipality and are quite willing to hand over copies of these reports knowing that the same will be treated confidentially."
Dec. 4, 1943	Psychiatric examination of Hulbert by Dr. George Davidson, at Hollywood Sanitarium.
Dec. 15, 1943	Report of Dr. George Davidson on Dec. 4 examination of Hulbert.
Jan. 3, 1944	William Mitchell is awarded damages of $1000 against the *Victoria Daily Times* for libel.
Jan. 11, 1944	Handwritten letter from Frank Hulbert to Eric Pepler: "I am the son of John Thomas Pepler and Mary Jane Pepler Hulbert. I have now been at Oakalla for several months and would like to know what is to be done about my cases. I was told I would be brought back to court but have heard nothing from anyone."
Jan. 12, 1944	Hulbert is escorted to Saanich Police Court.

Jan. 14, 1944	Letter from the Assistant Departmental Solicitor to Frank Hulbert, acknowledging receipt of the Jan. 11 letter addressed to Eric Pepler.
Jan. 28, 1944	Frank Hulbert is convicted of three counts of buggery, and sentenced to three concurrent one-year sentences, beginning Nov. 5, 1943.
Nov. 20, 1944	Memorandum from the Deputy Provincial Secretary to Eric Pepler, regarding the continued imprisonment of Hulbert.
June 2, 1945	Frank Hulbert released into his mother's custody, by Order in Council.
Mar. 4, 1946	Frank Hulbert convicted of contributing to juvenile delinquency, and sentenced to one year hard labour.
Jan. 11, 1947	Frank Hulbert released.
1947 or 1948	Lewis Kamann encounters Frank Hulbert at the Victoria police station.
Nov. 16, 1957	Death of Eric Pepler.

The Second Phase

Apr. 27, 1967	Vancouver City Police receive anonymous letter with reference to Saanich murder.
May 9, 1967	RCMP report, Squamish detachment, regarding the anonymous letter.
June 28, 1967	RCMP report, Constable Dan Creally, regarding the anonymous letter and identifying the reference as being to the Molly Justice murder.
Oct. 25, 1967	A party of police officers (including Robin Stewart, Norman Baker and Ron Coulter of the Saanich Police, and Dan Creally and William Kerr of the RCMP) conduct a search of Frank Hulbert's residence in Port Alberni. Stewart, Creally and Kerr take a statement from Hulbert at the RCMP detachment in Port Alberni.
Oct. 26, 1967	Issuance of a Warrant to Apprehend Frank Hulbert alias Frank Pepler for public mischief, under *Juvenile Delinquents Act*.
Oct. 27, 1967	Frank Hulbert is arrested by Norman Baker, Ron Coulter and Dan Creally, and is transported to Nanaimo.
Oct. 28, 1967	Frank Hulbert is transported from Nanaimo to Saanich Police cells, where Louis Lindholm attends to advise him. Constable William Crossan of the Saanich Police poses undercover as another prisoner, and obtains statement from Hulbert.
Oct. 30, 1967	Frank Hulbert is charged with public mischief.
Nov. 13, 1967	An Information is sworn by Det. Sgt. Robin Stewart, charging Frank Hulbert with perjury. An Order is made to transfer Hulbert to adult court.
Dec. 13-14, 1967	Preliminary hearing of Frank Hulbert for the perjury charge, Magistrate William Ostler presiding. Defence counsel is Jack Gatehouse; prosecutor is Wallace Anderson.
Dec. 18, 1967	Frank Hulbert is committed for trial by Magistrate Ostler.
Feb. 21-26, 1968	First perjury trial of Frank Hulbert, Judge Montague Tyrwhitt-Drake presiding. Defence counsel is Jack Gatehouse; prosecutor is Wallace Anderson. Hulbert is convicted of perjury.
Mar. 4, 1968	Frank Hulbert is sentenced to five years imprisonment.

Mar. 26, 1968	Notice of Motion issued by Jack Gatehouse for leave to appeal from Hulbert's perjury conviction.
June 27, 1968	Judgement is reserved by the B.C. Court of Appeal on Hulbert's appeal.
July 19, 1968	Reasons for judgement of Mr. Justice A.E. Branca are released, quashing Hulbert's conviction for perjury and ordering a new trial.
Aug. 6, 1968	Letter from Neil McDiarmid to Wallace Anderson, recommending that Frank Hulbert should not be charged with the murder of Molly Justice.
Jan. 21-25, 1969	Second perjury trial of Frank Hulbert, Judge G.B. Ladner presiding. Defence counsel is Jack Gatehouse; prosecutor is Wallace Anderson. Hulbert is convicted of perjury, and sentenced to 4½ years imprisonment.
July 24, 1970	Hulbert due for release on parole.

The Third Phase

Feb. 17, 1996	Death of Frank Hulbert in Port Alberni
Mar. 1, 1996	*Victoria Times-Colonist* article omitting Molly Justice from list of unsolved murders. Later in March, this prompts Marjorie Justice, Molly's sister-in-law, to phone Insp. Al Hickman of the Saanich Police to make sure that Molly's file was still open.
June 14, 1996	Front page *Times-Colonist* article, titled "JUSTICE DENIED", reporting Insp. Al Hickman's conclusions regarding the Molly Justice murder.
June 17, 1996	J.M. speaks to a *Times-Colonist* reporter about the indecent assault by Frank Hulbert.
June 18 and 19, 1996	Further *Times-Colonist* articles on the J.M. assault and the Molly Justice murder.
June 21, 1996	Editorial in the *Times-Colonist* calling for an inquiry into the Molly Justice case.
June 30, 1996	*Times-Colonist* article reporting on Cecil Branson's observations on the case.
July 3, 1996	Appointment of the present inquiry.

(d) Information Sources:

Personal Interviews

July 10, 11 and 16, 1996, Vancouver	Cecil Branson, Q.C.
July 18, 1996, Nanaimo	Lewis Kamann Cpl. Dan Creally
July 24, 1996, Victoria	Ernie Quantz, Q.C. Tony Oliver Alys Thomas Ann Stokes
July 25, 1996, Victoria	Wallace Anderson, Q.C. Marjorie Justice Barbara Cutler David Cutler
July 26, 1996, Victoria	Neil McDiarmid, Q.C.
July 29, 1996, Vancouver	J.M.
August 13, 1996, Victoria	Insp. Al Hickman Dr. Gilbert Kennedy, Q.C.
August 15, 1996, Victoria	June Charlton Insp. Al Hickman

In addition to the above personal interviews, more than 20 persons were contacted by telephone and five letters received.

(e) Analysis of Hulbert's Stories

This Appendix contains a summary of an analysis of the evidence from which it may be determined whether Hulbert had information which could only have been known to the murderer of Molly Justice. The tables which follow show:

i. What Hulbert said in his visit to the murder scene with Sgt. Eric Elwell and Const. Victor Smith, on May 17, 1943.

ii. What Hulbert said in his written statement to the police on June 12, 1943.

iii. What Hulbert said in his testimony at William Mitchell's preliminary hearing, in July 1943.

iv. What Hulbert said in his testimony at William Mitchell's trial, in November 1943.

v. What Hulbert said to the Provincial Police constables escorting him to the mainland after William Mitchell's trial, on November 14, 1943.

vi. What was found to be true, by independent evidence from the crime scene.

vii. What was public knowledge at the time of Hulbert's arrest.

viii. What Hulbert said about the crime that was untrue (i.e. not in accord with independent evidence from the crime scene).

ix. What Hulbert knew that (a) was true (i.e. accorded with the evidence from the crime), and (b) had not become public or local knowledge.

The analysis shows that the only piece of information said to have been relayed by Hulbert which would not have been public knowledge at the time was his response to a question from Const. Smith as to where the purse, gloves and cigarette case were hidden, during their visit to the murder scene on May 17, 1943. According to Const. Smith's statement in 1968, Hulbert said that Mitchell hid them along the other path. It had not, at that time, been reported in the newspapers that the police had found the purse and cigarette case on the path extending from Darwin Ave. However:

- The newspapers reported in February that there were persistent rumours that the purse had been found by the police; it is likely that local rumours included the location where the purse was found, although this was not reported in the newspapers.

- On subsequent occasions, Hulbert said that Mitchell threw the purse away, and that he knew nothing about the cigarette case -- and the Saanich Police appear to have believed these statements when they proceeded against Mitchell. Const. Smith's question included a reference also to gloves, which were not found at the relevant spot, casting some doubt on whether, on May 17, 1943, Hulbert actually demonstrated knowledge of where the purse and cigarette case had been hidden.

- Const. Smith stayed behind to look for Molly's earring at the murder scene, while Hulbert and Sgt. Elwell went along the Darwin Avenue path without him. There is no available evidence of what Hulbert said to Elwell when they went along the path. There is no evidence of whether Hulbert knew more than that the purse and cigarette case were on the path.

— — — — —

Tables

i. What Hulbert said in his visit to the murder scene:

Body	--
Parcels	--
Round stone	--
Wig	--
Gloves	--
Wallet	--
Purse	Smith asked Hulbert where the purse and cigarette case were. Hulbert said that Mitchell hid them on the other path. Elwell went with Hulbert along the other path while Smith stayed behind at the Darwin/CNR intersection.
Cigarette case	
Knife	--
Hiding place	Mitchell hid to wait for Molly at a large rock on the left side of the track
Sequence of events	--

Source: signed statement of Victor Smith, 1968; will say of Victor Smith on Saanich Police report, 1968.

ii. What Hulbert said in his written statement to the police:

Body	--
Parcels	--
Round stone	Mitchell hit Molly on the head with a stone
Wig	Mitchell burnt the wig he was wearing
Gloves	Mitchell lost one of his gloves and burnt the other
Wallet	--
Purse	Mitchell took money out of the purse, and threw it [the purse?] in the lake
Cigarette case	--
Knife	--
Hiding place	Mitchell waited at the second bridge for Molly
Sequence of events	Mitchell got off the bus at the fire hall, went up the road past the bridge and along the path to the second bridge where he waited for Molly. Mitchell propositioned Molly; when she refused he hit her on the head with a stone. When she came to, Mitchell killed her.

Source: statement of Hulbert, June 12, 1943.

iii. What Hulbert said in his testimony at Mitchell's preliminary hearing:

Body	--
Parcels	--
Round stone	Mitchell hit Molly on the head with a rock
Wig	Mitchell burnt the wig he was wearing
Gloves	Mitchell lost one of his gloves and burnt the other
Wallet	--
Purse	Mitchell took some of the money out of the purse and threw the purse away
Cigarette case	Hulbert testified that he didn't know that the cigarette case was found with a bucket at Swan Lake, and that he didn't know where the bucket was found
Knife	Mitchell killed Molly with a penknife
Hiding place	Mitchell waited under the bridge for Molly
Sequence of events	Mitchell got off the bus at the firehall, went down the first road and down the path to the greenhouses, then down under the bridge where he waited for Molly. Mitchell propositioned Molly; when she refused he hit her on the head with a rock. When she came to, Mitchell killed her with a penknife.

Source: transcript of preliminary hearing.

iv. What Hulbert said in his testimony at Mitchell's trial:

Body	--
Parcels	--
Round stone	Mitchell hit Molly on the head with a stone
Wig	Mitchell burnt the wig he was wearing
Gloves	Mitchell lost one of his gloves and burnt the other
Wallet	--
Purse	Mitchell took some money out of the purse and threw the purse away
Cigarette case	--
Knife	--
Hiding place	Mitchell waited under the bridge for Molly
Sequence of events	Mitchell got off the bus at the fire hall, walked down under a bridge and waited for Molly. Mitchell propositioned Molly; when she refused he hit her on the head with a stone. When she came to, Mitchell killed her.

Source: bench book of Coady J. from trial; *Times*, Nov. 3, 1943.

v. What Hulbert said to Provincial Police constables escorting him to the mainland:

Body	--
Parcels	--
Round stone	--
Wig	--
Gloves	Hulbert burned Molly's gloves and wallet but he doesn't remember where he burnt them -- it may have been in the furnace of his house. (According to Lockie, he was quite sure it was in the furnace of his house.)
Wallet	
Purse	--
Cigarette case	Hulbert placed Molly's cigarette case under a pail a short distance from the murder site. Hulbert thought the police had found his fingerprints on the cigarette case.
Knife	Hulbert didn't use Mitchell's knife on Molly, and thinks it must have been a knife from his home, probably his favourite hunting knife
Hiding place	--
Sequence of events	Hulbert was in the vicinity of the murder site, but he went into a "passionate fog" and doesn't remember much until his head cleared and he was riding his bicycle home. Hulbert made no attempt to deny that he was the murderer.

Source: reports of Const. A.W. Quinn, Nov. 25, 1943, and Const. J. Lockie, Nov. 26, 1943.

vi. What was actually found to be true, by independent evidence:

Body	Body was found by Elwell, Smith and Logie, at approx. 10:00 p.m. on Jan. 18, 1943. It was on the grade just off the CNR right-of-way, approx. 8-10 ft. from the actual roadbed of the CNR, at the intersection with Darwin Ave, on the southeast side of the track. A large tree and bushes obstructed the view of people passing.
Parcels	Parcels were first spotted at about 6:30 p.m. on Jan. 18, 1943, by two girls walking along CNR right-of-way. Mr. and Mrs. Logie saw the parcels after 8:00 p.m. The parcels were lying inside the track against the rails, or placed under the railhead, about 30 yds. to the northeast of the Darwin Ave. intersection. (According to Victor Smith's willsay, the parcels were found at the large rock on the left side of the track, where Hulbert said Mitchell had hid waiting for Molly.)
Round stone	A round stone was found about 120 ft. from the body, at a bushy spot on the rolling ground on the northwest side of the railway track.
Wig	No wig was ever found by the police
Gloves	A pair of soft capeskin gloves were found on Feb. 3, 1943
Wallet	--
Purse	Molly's purse and cigarette case were found under an inverted bucket, on Feb. 4, 1943, by Elwell, Donaldson and Bull, beside the trail extending to the northwest from Darwin Ave. This point was about 200 yds. from the murder site, on the edge of a garbage dump, within two feet of an incline leading down to the overflow from Swan Lake. The purse contained a handkerchief, powder puff, cigarette package, numerous papers, two packs of matches, comb and lipstick. No fingerprints were found on the bucket, and none could be taken from the purse. Mostly just Molly's fingerprints were found on the cigarette case.
Cigarette case	
Knife	--
Hiding place	--
Sequence of events	There was evidence of a struggle between the point where the parcels were found to the point where the body was found. Molly's hair was found in the bushes, and there were blood spots in the snow. Human hair was also found under Molly's fingernails. Molly had been hit on the head with a blunt object, and was stabbed 30-35 times. There was no evidence of rape.

Source: transcript of preliminary hearing; bench book of Coady J. from trial; *Times*, Jan. 22, 1943; *Colonist*, Jan. 23, 1943; *Times*, Feb. 13, 1943; *Times*, Nov. 2, 1943; willsay of Victor Smith on witness list in Saanich Police report, 1968.

vii. What was public knowledge at the time of Hulbert's arrest:

Body	A photograph appeared in the *Times* on Jan. 22, 1943, identifying the exact spot where the body was found.
Parcels	Two parcels were found on the CNR right-of-way about 40 ft. from the body: *Times*, Jan. 29, 1943.
Round stone	Molly was hit over the head with a blunt object, which may have been a stone: *Colonist*, Jan. 23, 1943; *Times*, Jan. 23, 1943.
Wig	--
Gloves	A pair of soft capeskin gloves were found on the CNR right-of-way: *Times*, Feb. 13, 1943. A photograph of the gloves, and a full description, appeared in the *Times*, Feb. 13, 1943, and the *Colonist*, Feb. 14, 1943.
Wallet	--
Purse	Chief Bull denied persistent rumours that Molly's purse had been found on the CNR right-of-way: *Times*, Feb. 5, 1943; *Times*, Feb. 9, 1943.
Cigarette case	--
Knife	It was believed by police that a pocket knife was used to stab Molly: *Times*, Jan. 23, 1943.
Hiding place	--
Sequence of events	Human hair was found under Molly's fingernails, and there was evidence of a struggle between Molly and her assailant: *Times*, Jan. 22, 1943. Molly was hit over the head with a blunt object, and was stabbed multiple times. According to the inquest, the blow to the head must have been one of the last wounds because it would have caused Molly to be dazed. There were no signs of rape: *Times*, Jan. 29, 1943; *Colonist*, Jan. 30, 1943.

viii. What did Hulbert say about the crime which was untrue (i.e. not in accord with independent evidence from the crime scene)?

Statement by Hulbert:	**Independent evidence:**
The murderer burnt the wig he was wearing	The police never found a wig, so it is impossible to confirm or reject the truth of this statement
The murderer lost one glove and burnt the other	The police found a pair of gloves in the vicinity. However, these were never conclusively connected to the murder, so it is impossible to confirm or reject the truth of this statement.
The murderer took money out of the purse and threw the purse in the lake	It is true that Molly's wallet was removed from her purse. However, the purse was found by the police under a bucket, beside a slope leading down to the overflow from Swan Lake -- this statement is false.
The murderer waited under the second bridge for Molly	This is possible; it is not consistent with the theory that the murderer accosted Molly at the spot where the parcels were found, but there may have been a chase before the parcels were dropped. Note the inconsistency with Victor Smith's version.

ix. What did Hulbert know that (a) was true (i.e. accorded with independent evidence from the crime scene), and (b) had not become public or local knowledge?

Statement by Hulbert:	**Was it public or local knowledge?**
The murderer hit Molly on the head with a stone	Public knowledge (newspaper reports). The newspapers also reported that this would have caused Molly to become dazed, but that she was killed by the stab wounds.
The murderer hid to wait for Molly at a large rock, which was where the parcels were found (statement to Victor Smith)	It was public knowledge where the parcels were found (newspaper reports). Furthermore, Smith's version of Hulbert's statement is inconsistent with Hulbert's statements on every other occasion that the murderer hid under the second bridge.
The murderer propositioned Molly, and attacked her when she refused.	It was true that Molly was not raped, but this was public knowledge (newspaper reports from inquest).
The purse and cigarette cases were hidden on the other path (statement of Victor Smith)	This was not in the newspapers. However: • The newspapers did report that there were persistent rumours regarding the finding of the purse. • This statement is inconsistent with Hulbert's statements on other occasions that the murderer threw the purse away, and that he didn't know about the cigarette case or the bucket. • Victor Smith stayed behind to look for Molly's earring, so we have no evidence of what Hulbert said to Elwell when they went along the Darwin Ave. path.
The murderer killed Molly by stabbing her with a penknife	Public knowledge (newspaper reports)
Hulbert told Quinn and Lockie that he placed the cigarette case under a pail close to the murder scene	This statement was made after the trial, when the location where the cigarette case was found had become public knowledge.

(f) Principal Documents

This Appendix contains the principal documents referred to in the report (or page reference where reproduced in body of text), and a table of files searched at the B.C. Provincial Archives. All documents gathered will be provided to the Ministry of the Attorney General.

Index of Principal Documents: (in order reproduced)

Birth Certificate of Francis James Pepler
Marriage Certificate of Thomas Pepler (see p. 42)

Correspondence, Sept. 21-Oct. 29, 1943
    (This correspondence concerns the appointment of a prosecutor for William Mitchell's murder trial, and the decision not to traverse the trial to the next assizes.)
    Letter, Bd. of Police Commissioners to Attorney General, Sept. 21, 1943
    Letter, Claude Harrison to Attorney General, Sept. 22, 1943
    Letter, Attorney General to Saanich Municipal Clerk, Sept. 22, 1943
    Letter, Attorney General to Bd. of Police Commissioners, Sept. 23, 1943
    Letter, Reeve Warren to Attorney General, Sept. 24, 1943
    Letter, Attorney General to Reeve Warren, Sept. 24, 1943
    Radiogram, Eric Pepler to Attorney General, Sept. 29(?), 1943
    Radiogram, Attorney General to Eric Pepler, Sept. 29, 1943
    Letter, Eric Pepler to Reeve Warren, Oct. 1, 1943
    Letter, Gordon Cameron to Eric Pepler, Oct. 29, 1943

Reports of Constables A.W. Quinn and J. Lockie
    (These are the reports of the Provincial Police officers who escorted Frank Hulbert to the mainland on Nov. 14, 1943.)
    Report of Const. A.W. Quinn, Nov. 25, 1943
    Report of Const. J. Lockie, Nov. 26, 1943
    Transcription of reports

Correspondence, Nov. 22-Dec. 2, 1943
    (This correspondence concerns disclosure of the reports of Constables Quinn and Lockie to the Saanich Police.)
    Letter, Reeve Warren to Eric Pepler, Nov. 22, 1943
    Letter, Eric Pepler to Reeve Warren, Nov. 29, 1943
    Letter, Reeve Warren to Eric Pepler, Dec. 1, 1943
    Letter, Eric Pepler to Reeve Warren, Dec. 2, 1943 (see p. 56)

Report of Dr. George Davidson, Dec. 15, 1943
(This is the report of the psychiatrist who examined Frank Hulbert on Dec. 4, 1943.)

Letter, Frank Hulbert to Eric Pepler, Jan. 11, 1944 (see p. 36)
Letter, Assistant Departmental Solicitor to Frank Hulbert, Jan. 14, 1944

Memorandum, Deputy Provincial Secretary to Eric Pepler, Nov. 20, 1944

Order in Council 1071/43, Aug. 2, 1943
Order in Council 917/45, May 30, 1945
Provincial Gaol Record of Frank Hulbert, no. 46791
Provincial Gaol Record of Frank Hulbert, no. 51255

1967 Saanich Police Department Reports and related documents
- Report, Oct. 25, 1967
- Warrant to apprehend Frank Hulbert, Oct. 26, 1967
- Report, Oct. 27, 1967
- Report of Const. William Crossan, Oct. 31, 1967
- Information charging Frank Hulbert with perjury, Nov. 13, 1967 (see p. 10)

1968 documents concerning the decision not to charge Frank Hulbert with murder
- Saanich Police witness list
- Signed statement of Victor Smith
- Letter, Neil McDiarmid to Wallace Anderson, Aug. 6, 1968 (see p. 75)

Ministry of Attorney General Crown Counsel Policy Manual:
- Charge Approval Guidelines
- Charge Approval -- Police Appeal

"Guilty innocents: the road to false confessions", *The Lancet*, Nov. 26, 1994,
Vol. 344, No. 8935, p. 1447

Table of files searched at Provincial Archives

- - - - -

DEPARTMENT OF HEALTH AND WELFARE
DIVISION OF VITAL STATISTICS

CERTIFIED A TRUE PHOTOGRAPHIC PRINT
OF THE ORIGINAL RECORD
on file at the office of
the Division of Vital Statisti
Parliament Buildings, Victoria

November 23rd, 1967
Date issued.

J. H. Doughty
Director of Vital Statistics.

DEPARTMENTAL
USE ONLY

RESTRICTED
This photocopy is issued pursuant to Sec. 30(3)
of the Vital Statistics Act..FOR COURT USE ONLY

This form if placed in an envelope, marked "Dominion Statistics—Free, penalty for improper use $300," and properly addressed to the District Registrar, will pass through the Mail "FREE."

FORM 4

PROVINCE OF BRITISH COLUMBIA

Registered No. 2 P 27

CERTIFICATE OF REGISTRATION OF BIRTH

(BY PARENT OR GUARDIAN)

1. PLACE OF BIRTH.
If in Municipality Saanich
If in City, Town or Village .... Street Rutledge House No. 3252

2. FULL NAME OF CHILD Francis James Pfeffer

3. Sex of child	4. Single, Twin, triplet or other?	5. Was the child born alive?	6. Are parents married?	7. Date of birth?
Male	Single	Yes	yes	June 13th 1927

FATHER

8. Full Name Thomas Pfeffer
9. Residence 3252 Rutledge Street
10. Racial origin Canadian
11. Age last birthday 40 years
12. Birthplace Toronto
13. Occupation:—
(a) Trade or profession ....
(b) Business in which employed Cook

MOTHER

14. Full maiden Name Mary Jane Lecomte
15. Residence 3252 Rutledge Street
16. Racial Origin English
17. Age last birthday 30 years
18. Birthplace London England
19. Children of this mother (including this birth).
Number born alive 4 Number now living 3
20. Was this a premature birth? No

21. Name and Post Office address of Informant Mr Thomas Pfeffer 3252 Rutledge

22. Name of Doctor, nurse or other person in attendance at birth Dr Wasson

I certify the foregoing to be true and correct to the best of my knowledge and belief.

Given under my hand at Victoria this 21 day of June 1927

Thomas Pfeffer

I hereby certify that the above return REGISTERED day of ....
.... on the JUNE 21 1927

District Registration No. .... REGISTRAR, B. D. & M.
VICTORIA, B.C.

[illegible]
POLICE COURT CLERK

HENRY C. HALL, K.C.
POLICE MAGISTRATE

POLICE COURT
VICTORIA, B.C. September 21st, 1943.

The Hon. the Attorney-General,
Province of British Columbia,
Parliament Bldgs.,
Victoria, B.C.

M265-6

Sir:

The Board of Police Commissioners of the City of Victoria met this morning to consider an application from the City Prosecutor, Mr. C. L. Harrison, for leave of absence from civic duties for the month of October, in order to represent the Crown at the Fall Assizes in the case of Rex vs. Mitchell (murder).

I have been directed to write to you and respectfully advise you that the Board, after giving the matter very careful consideration, feels that in view of the pressure of work in the City Police Court (both in number of cases being prosecuted and the nature of them), the services of Mr. Harrison cannot be spared at this time.

Mr. Harrison has been notified accordingly.

I have the honour to be,
Sir,
Your obedient servant,

B.L.Spence
Mrs.B.L. Spence,
Secretary,
Board of Police Commissioners.

C. L. Harrison
Barrister and Solicitor
Notary Public, Etc.
City Prosecutor

[illegible]
P O Box [illegible]

Suite 11
Law Chambers
[illegible] Bastion Street
Victoria, B. C.

September 22, 1943.

The Honourable the Attorney-General,
Parliament Buildings,
Victoria, B. C.

C 95-4

Re Victoria Fall Assizes, 1943
Rex v. Mitchell (Murder.)

Dear Sir:

I received your letter of September 15th, enclosing Brief for the Crown.

I applied to the Police Commissioners at Victoria, for leave of absence to give me sufficient time to attend to this matter, but I am advised that the Board of the Police Commissioners feel that in view of the pressure of work at the City Police Court at the present time they cannot see their way clear to give me leave of absence for the purpose.

In connection with this matter, I would strongly suggest that this case be traversed until the next assizes. There is a person who is alleged to have important evidence and a search has been made for this person ever since the charge was laid against Mitchell. This person has been referred to as "Harry" which is doubtless an incorrect name.

While investigating on behalf of Saanich Municipality I was given definite information, and I am still assured by Sergeant Elwell of the Saanich Municipal Police Force that this person is in existence, and he has a description of him. Sergeant Elwell has made extensive search, but so far has been unsuccessful in locating this man.

It seems to me it would be most unwise if I may say so, to proceed against Mitchell without this person. His evidence might turn out to be even in favour of the accused, in which event, the accused should of course have the benefit of it. On the other hand, it may be vital evidence for the Crown against the accused. Sergeant Elwell can give you details in this regard.

I regret I will be unable to act for the Crown in this matter at the present Fall Assizes.

I have the honour to be
Sir,

Your obedient servant,

CLH:DM

P. S. I return herewith the Brief.

~~N-2063~~ C95.4

September 22nd. 1943.

W.A. Green, Esq.,
Municipal Clerk,
Corporation of the District of Saanich,
Royal Oak, B.C.

Dear Sir:-

Referring again to your letter of July 5th., I beg to advise that following your letter the appointment of Mr. Claude Harrison to handle the case of Rex vs. Mitchell was carried out.

You will remember that this was because of the peculiar circumstances, whereby the Victoria Police had been co-operating with your Police, and Mr. Harrison had done a great deal of work in connection with the matter.

I have today received, however, a communication from the Board of Police Commissioners of Victoria advising that in view of the pressure of work in the City Police Court the services of Mr. Harrison cannot be spared at this time.

I need hardly advise you that this letter comes to me as somewhat of a surprise.

Yours very truly,

Attorney-General.

C 95.4

23rd September, 1943.

Mrs. B.L. Spence,
Secretary, Board of Police Commissioners,
Police Court,
Victoria, B.C.

Dear madam:

I beg to acknowledge receipt of your letter of September 21st, advising of the refusal of the Board of Police Commissioners to give leave of absence to Mr. Harrison, to take the Mitchell case.

Yours very truly,

Attorney-General.

WARREN
[illegible]

TELEPHONES GARDEN 4188
COLQUITZ 91

~~[illegible]~~ W.A.Greene
C.M.C.
~~MISS M. A. ELLIOTT~~
TREASURER

CORPORATION OF THE DISTRICT OF SAANICH

ROYAL OAK P.O.
VANCOUVER ISLAND, B.C.

September 24th., 1943.

R. L. Maitland, Esq., K. C.
Attorney-General,
Parliament Buildings,
VICTORIA, B. C.

Dear Sir:

Re: Victoria Fall Assizes, 1943
Rex vs. Mitchell (Murder)

I have received a communication from Mr. Claude L. Harrison, who is now Prosecutor of this Municipality in the place of E. L. Tait, informing me that he has strongly recommended that the above case be held over for the Spring Assizes, in order that an important witness, known as 'Harry' be located. Our Sergeant Elwell has a definite description of this witness and it is our hope that this man may be located.

In view of the fact that Mr. Harrison has been dealing with this case from its' commencement and is fully conversant with all the details in connection therewith, it is hoped that he will be permitted to act as Crown Prosecutor at the Spring Assizes, should this case be traversed until then, as recommended.

Yours truly,

E C Warren
REEVE.

WAG/MH

C. 95-4

September 26th. 1945.

Reeve C.E. Warren,
Municipality of Saanich,
Royal Oak, B.C.

Dear Sir:-

re Rex vs. Mitchell

I beg to acknowledge receipt of your letter of even date.

The conduct of this prosecution is entirely in the hands of Mr. Eric Pepler, K.C., Deputy Attorney-General, with whom I understand your Police Department conferred yesterday afternoon and discussed the matter referred to in your letter.

Yours very truly,

Attorney-General.

RADIOGRAM.

Deputy Attorney-General wishes following message conveyed to Attorney-General on board P.G.E., left Squamish yesterday noon en route to Prince George.-

Judge Bird now advises he will not reach Prince George until Thursday night (stop) Rex versus Mitchell, Victoria Assize, on going into evidence do not now want to take this case for various reasons and feel strongly that other counsel be appointed (stop) Suggest Davey or Cameron and whoever appoint be instructed to apply for traverse to Spring Assize to perm further evidence being obtained (stop) Kindly wire or telephone reply.

BRITISH COLUMBIA POLICE

RADIOGRAM

Message No. 57	Time sent:	Time received:

PR GEORGE
SEPT 29

COMMR
VICTORIA

PLEASE CONVEY THE FOLLOWING FROM MR MAITLAND TO COL PEPLER. "HALDANE SHOULD HAVE REFUSAL OF OFFER TO ACT ALONE OR WITH CAMERON. ALTERNATIVELY HAVE CAMERON ACT. XXXX SO FAR UNABLE TO CONTACT YOU ON PHONE"

NOO 1/8
3.10P

H

C-95-4 October 1st 1948.

E. C. Warren, Esq.,
Reeve - Municipality of Saanich,
Royal Oak, B.C.

Dear Sir:-

Rex v. Mitchell.

With reference to previous correspondence in this case, the writer is unable to act, and on instructions of the Attorney-General Mr. Gordon A. Cameron, Barrister of this City, has been retained as Crown Prosecutor in this case.

I have the honour to be,
Sir,
Your obedient servant,

Deputy Attorney-General.

GORDON A CAMERON
BARRISTER SOLICITOR
AND
NOTARY PUBLIC

TELEPHONE GARDEN [illegible]

[illegible]
[illegible]

VICTORIA, B C

October 29, 1943

Deputy Attorney-General,
Parliament Buildings,
Victoria, B. C.

[illegible]

Dear Sir: RE; Rex vs Mitchell

C 95-4

I beg to confirm your instructions to proceed with the above trial and not apply for a traverse.

The trial date has been set for Monday, November 1st, 1943.

Yours truly,

Gordon A. Cameron

GAC/R

DISTRICT Victoria

DETACHMENT Sooke

DATE 25-11-43

UNORGANIZED TERRITORY

PR. or PI. R.

C R I M E   R E P O R T

N I L

REX -V- HULBERT, Francis.

With reference to memo under date of 23-11-43 from the Insp. i/c, C.I.B., B.C.Police in connection with statements made to Constable J. Lockie and the undersigned when on the C.P.R. boat bound from Victoria to Vancouver by the above named, I have the following to submit:-

1. Hulbert was escorted to Vancouver by Constables J. Lockie, Wm. Coupland and the undersigned on Sunday afternoon, 14-11-43, and as Const. Lockie had heard the evidence given by Hulbert in the recent Victoria Assize Court case, Rex -V- Mitchell, Wm. who was charged with the murder of the late Molly Justice and subsequently acquitted. Lockie felt that Hulbert had not told the truth or knew more than he told on the witness stand and it was agreed that we "pump" Hulbert to find out the truth if possible.

H.Q.R.S. REF.

2. We had only been in our stateroom a short time before it was suggested that we have a cup of coffee and leaving Const. Coupland in charge of Hulbert. Leaving the stateroom, I called back to Coupland that we were going down to see Molly and get a cup of coffee. Lockie retorted with "Oh Molly's not there any more, she was killed, did'nt you know?

DIVL. REF.

3. On returning to the stateroom, a number of questions were put to Hulbert to which he answered as follows:- he lied against Mitchell because he hated him so much and that he would do the same again against Mitchell because it was Mitchell who got him into all this trouble and would give him the same as "Molly" got.

DIST. REF.

DET. REF.

[References to the attack on J.M. are deleted.]

He was in a fog at the time of the Molly Justice affair but things are coming clearer to me now. He remembers riding home on his bicycle on the night of the Molly Justice murder and being in the vicinity of where the crime took place when he went into this "passionate fog" and does'nt remember much more until his head cleared and he was riding his bicycle towards his home.

4. He did'nt use Mitchell's knife on "Molly" and thinks it must have been one from his home, "probably my favourite hunting knife". He remembered burning her gloves and wallet but could not remember where he burnt them but it could have been in the furnace of his house. He also remembered placing her cigarette case under a pail and knew that they had found his finger-prints on the cigarette case. He thought if he was taken over the scene of the crime "things would come clearer to me".

5. Various angles of the Molly Justice murder were discussed with Hulbert throughout the trip and he made no attempt to deny the fact that he was the murderer but two or three times he stated that they could'nt pin it on him because when the final time came he would'nt talk and would deny all knowledge of it to the police.

CONTINUED.

This report should show whether [illegible]

DISTRICT
DETACHMENT

DATE:

CONTINUED PAGE (2)

Re -V- HULBERT, Freddie.

---

6. I re-call hearing a discussion between [illegible] and Hulbert in which the name "[illegible]" was mentioned, just what this conversation amounted to, I can not state.

7. On returning from this escort on Monday afternoon, 15-11-43 we met Sgt. F.Elwell of the Saanich Police Dept. at the Victoria City police station, informed him of what Hulbert had told us and that we had no doubts about him being responsible for the Molly Justice murder. Sgt.Elwell stated that he was also of the same opinion and that Hulbert had told him the same story and stated "what can we do about it".

To the N.C.O.i/c,
Victoria District,
Victoria [illegible]

(A.W.Quinn)
Const.Reg't.#733.
i/c Sooke Det'mt.

HQRS. REF

DIV'L. REF

DIST. REF

DET. REF

FORWARDED
To the O.C. "A" Division
NOV 2
N.C.O. i/c VIC. DIST.

FORWARDED TO
COMMISSIONER
NOV . 1943
Inspr. Commdg "A" Divn.

DISTRICT: Victoria. (E.P.)

DETACHMENT: Victoria.

DATE: 26-11-43.

UNORGANIZED TERRITORY

FR - PW

CRIME REPORT

Nil.

REX vs HULBERT, Francis

1. With reference to copy of memorandum dated the 23rd day o November 1943 from the Inspector i/c C.I.B. in connection with the above subject, with forwarding notes thereon, I would now report the following:

2. On Sunday, November 14th 1943, Hulbert was escorted to Oakalla Prison Farm by Constables Quinn, Coupland and the undersigned, to complete serving a term of imprisonment already imposed in Saanich Police Court, after being held in custody as a material witness in the case of REX vs MITCHELL, "Murder".

HDQRS REF

3. The undersigned felt that this escort would afford a good opportunity to endeavour to break down Hulbert, who was strongl suspected in connection with the death of Miss Molly Justice, and perhaps obtain some tangible clue which would connect him with the murder. With this end in view, the undersigned approached Constable Quinn on the matter, and we both agreed to quiz Hulbert. This was accordingly carried out by both of us during the course of the boat trip to Vancouver, B.C.

DIV'L REF

4. A short time after leaving Victoria, Constable Quinn and the undersigned decided to leave the stateroom for a cup of coffee, leaving Constable Coupland with Hulbert. At this time Constable Quinn exclaimed - "We are going down to see Molly to get a cup of coffee" - The undersigned replied - "Oh Molly is not here any more, she was killed, didn't you know?" We then proceeded on our way towards the Coffee Shop.

DIST REF

DET REF

5. When we returned to the stateroom, Quinn and the undersigned then asked Hulbert why he had lied against Mitchell in giving his evidence on the stand, to which he replied "If you knew how much I hated that guy, I would do the same thing again" When asked if he would do the same to him as he did to "Molly", he replied "I sure would". On asking him why he had such a dislike for Mitchell, he replied "Well, he was the guy that told m to do something to a girl".

[References to the attack on J.M. are deleted.]

6. To subsequent questions concerning the death of Molly Justice, Hulbert replied that he was in a fog at the time it happen but that everything was coming clearer to him now. He remember riding home on his bicycle the night of the murder, also being [illegible] the vicinity of where the crime took place, but doesn't remembe very much more from this point on until his memory became clear [illegible]. This would be when he was riding his bicycle towards home. At this time he remembered burning Molly's gloves and wallet an [illegible] under a pail a short distance away [illegible] crime. He was quite sure that he burnt t [illegible] the furnace of his home. (Cont'd) p6.

[illegible] If required, clearly state the particular [illegible] "Government Liquor Act" should state the amount of expenses incurred b [illegible]

DISTRICT Victoria, E.P.
DETACHMENT Victoria.

FILE No.
DATE 20-11-43.

UNORGANIZED TERRITORY. (Cont'd from ..1.)

(2)

REX vs HULBERT, Francis.

7. In connection with the admission made by Hulbert to this point, he stated also, that " If you guys try to use this agai me, it would do you no good, because I would deny it, and you would not be able to prove anything".

8. When asked why he objected to the name of "Pepler" during the course of the trial, he replied that he did not want to talk about that matter, but added that the Deputy Attorney General was his uncle.

9. He also stated later that he knew that he was going to be examined by a physicatrist in Vancouver, but he knew how to fo them and they would get nothing on him.

HQRS. REF

10. On our return from Vancouver with Assize Court prisoners, after having delivered Hulbert to Oakalla, Constable Quinn and the undersigned met Sergeant Eric Elwell of the Saanich Police in the Victoria City Police station. As he was closely connec ed with the Molly Justice murder case, we approached him on th information we had obtained from Hulbert during the course of trip and after outlining the information obtained from Hulbert to the Sergeant, he replied that he was already cognizant of these facts.

DIVL. REF

CONCLUDED.

DIST. REF

To: The NCO i/c
Victoria District,
Victoria, B.C.

J. Leckie
(J. Leckie) Constable
Regt' #[illegible],
Victoria Highway Pat

DET. REF

FORWARDED
To the O.C. "A" Division
NOV 2
N.C.O. i/c Vic. DIST.

FORWARDED TO
COMMISSIONER
NOV 27 1943
Inspr. Comdg. "A" Divn.

Transcription of Crime Reports of Constables Quinn and Lockie

I. Report of A.W. Quinn:

Division "A"
District Victoria
Detachment Sooke

Date 25-11-43

UNORGANIZED TERRITORY

CRIME REPORT

REX -V- HULBERT, Francis.

With reference to memo under date of 23-11-43 from the Inspr. i/c, C.I.B., B.C. Police in connection with statements made to Constable J. Lockie and the undersigned when on the C.P.R. boat bound from Victoria to Vancouver by the above named, I have the following to submit:-

1. Hulbert was escorted to Vancouver by Constables J. Lockie, Wm. Coupland and the undersigned on Sunday afternoon, 14-11-43, and as Const. Lockie had heard the evidence given by Hulbert in the recent Victoria Assize Court case, Rex -V- Mitchell, who was charged with the murder of the late Molly Justice and subsequently acquitted. Lockie felt that Hulbert had not told the truth or knew more than he told on the witness stand and it was agreed that we "pump" Hulbert to find out the truth if possible.

2. We had only been in our stateroom a short time before it was suggested that we have a cup of coffee and leaving Const. Coupland in charge of Hulbert. Leaving the stateroom, I called back to Coupland that we were going down to see Molly and get a cup of coffee. Lockie retorted with "oh Molly's not there any more, she was killed, did'nt you know?"

3. On returning to the stateroom, a number of questions were put to Hulbert to which he answered as follows:- he lied against Mitchell because he hated him so much and that he would do the same again against Mitchell because it was Mitchell who got him into all this trouble and would give him the same as "Molly" got. [*References to the attack on J.M. are deleted.*] He was in a fog at the time of the Molly Justice affair but things are coming clearer to me now. He remembers riding home on his bicycle on the night of the Molly Justice murder and being in the vicinity of where the crime took place when he went into this "passionate fog" and does'nt remember much more until his head cleared and he was riding his bicycle towards his home.

4. He did'nt use Mitchell's knife on "Molly" and thinks it must have been one from his home, "probably my favourite hunting knife". He remembered burning her gloves and wallet but could not remember where he burnt them but it could have been in the furnace of his house. He also remembered placing her cigarette case under a pail and knew that they had found his finger-prints

on the cigarette case. He thought if he was taken over the scene of the crime "things would come clearer to me".

5. Various angles of the Molly Justice murder were discussed with Hulbert throughout the trip and he made no attempt to deny the fact that he was the murderer but two or three times he stated that they could'nt pin it on him because when the right time came he would'nt talk and would deny all knowledge of it to the police.

6. I re-call hearing a discussion between Lockie and Hulbert in which the name "Peplar" was mentioned, just what this conversation amounted to, I can not state.

7. On returning from this escort on Monday afternoon, 15-11-43 we met Sgt. E. Elwell of the Saanich Police Dept. at the Victoria City police station, informed him of what Hulbert had told us and that we had no doubts about him being responsible for the Molly Justice murder. Sgt. Elwell stated that he was also of the same opinion and that Hulbert had told him the same story and stated "what can we do about it".

To the N.C.O.i/c,
Victoria District,
Victoria B.C.

(signed)
(A.W. Quinn)
Const. Reg't. #793
i/c Sooke Det'cht.

II. Report of J. Lockie:

Division "A"
District Victoria. (M.P.)
Detachment Victoria.

Date 26-11-43

UNORGANIZED TERRITORY

CRIME REPORT

REX vs HULBERT, Francis

1. With reference to copy of memorandum dated the 23rd day of November 1943 from the Inspector i/c C.I.B. in connection with the above subject, with forwarding notes thereon, I would now report the following:

2. On Sunday, November 14th 1943, Hulbert was escorted to Oakalla Prison Farm by Constables Quinn, Coupland and the undersigned, to complete serving a term of imprisonment

already imposed in Saanich Police Court, after being held in custody as a material witness in the case of REX vs MITCHELL, "Murder".

3. The undersigned felt that this escort would afford a good opportunity to endeavour to break down Hulbert, who was strongly suspected in connection with the death of Miss Molly Justice, and perhaps obtain some tangible clue which would connect him with the murderer. With this end in view, the undersigned approached Constable Quinn on the matter, and we both agreed to quizz Hulbert. This was accordingly carried out by both of us during the course of the boat trip to Vancouver, B.C.

4. A short time after leaving Victoria, Constable Quinn and the undersigned decided to leave the stateroom for a cup of coffee, leaving Constable Coupland with Hulbert. At this time Constable Quinn exclaimed - "We are going down to see Molly to get a cup of coffee" - The undersigned replied - "Oh Molly is not here any more, she was killed, didn't you know?" We then proceeded on our way towards the Coffee Shop.

5. When we returned to the stateroom, Quinn and the undersigned then asked Hulbert why he had lied against Mitchell in giving his evidence on the stand, to which he replied "If you knew how much I hated that guy, I would do the same thing again". When asked if he would do the same to him as he did to "Molly", he replied "I sure would". On asking him why he had such a dislike for Mitchell, he replied "Well, he was the guy that told me to do something to a girl". [*References to the attack on J.M. are deleted.*]

6. To subsequent questions concerning the death of Molly Justice, Hulbert replied that he was in a fog at the time it happened but that everything was coming clearer to him now. He remembers riding home of his bicycle the night of the murder, also being in the vicinity of where the crime took place, but doesn't remember very much more from this point on until his memory became clearer, this would be when he was riding his bicycle towards home. At this time he remembered burning Molly's gloves and wallet and putting her cigarette case under a pail a short distance away from the scene of the crime. He was quite sure that he burnt the gloves and wallet in the furnace at his home.

7. In connection with the admission made by Hulbert to this point, he stated also, that "If you guys try to use this against me, it would do you no good, because I would deny it, and you would not be able to prove anything".

8. When asked why he objected to the name "Pepler" during the course of the trial, he replied that he did not want to talk about that matter, but added that the Deputy Attorney General was his uncle.

9. He also stated later that he knew that he was going to be examined by a physicatrist in Vancouver, but he knew how to fool them and they would get nothing on him.

10. On our return from Vancouver with Assize Court prisoners, after having delivered Hulbert

to Oakalla, Constable Quinn and the undersigned met Sergeant Eric Elwell of the Saanich Police in the Victoria City Police station. As he was closely connected with the Molly Justice murder case, we approached him on the information we had obtained from Hulbert during the course of our trip and after outlining the information obtained from Hulbert to the Sergeant, he replied that he was already cognizant of these facts.

CONCLUDED.

To: the NCO i/c
Victoria District,
Victoria, B.C.

(signed)
(J. Lockie) Constable,
Regt' #658,
Victoria Highway Patrol

CORPORATION OF THE DISTRICT OF SAANICH

[illegible] DEPARTMENT

ROYAL OAK P.O.
VANCOUVER ISLAND

November 22, 1943.

The Deputy-Attorney-General
Parliament Buildings
Victoria, B. C.

C 95-4

Re Hulbert Offences against Boys

Dear Sir:

The charges against Hulbert could not be proceeded with last Thursday, the 18th, owing to the fact that he had been taken back to Oakalla. The Court will sit again on Thursday, the 25th, but it is not our intention to obtain an Order on the Keeper of the Prison at Oakalla, for the production of Hulbert for this latter date, owing to the following:

Our Sergeant Elwell went to Vancouver for the purpose of having Dr. George Davidson of the Hollywood Sanitorium, examine Hulbert, to see whether the "fogs" he referred to were real or shams, when he made reference to the murder of Molly Justice. This information was given to you by our Mr. Elwell, and the importance of the matter was discussed with you, and arrangements made accordingly. It later appeared in a long distance telephone message between you and Mr. Elwell, that Hulbert had made a statement to the Provincial officer, who conveyed him to Oakalla to the effect that he killed Molly Justice,--but he was in a "fog", and that you then informed Mr. Elwell not to have Hulbert examined and preferred not to have the doctor see him, until you had investigated.

Under these circumstances, our Sergeant Elwell returned here. We will not ask for an Order to bring Hulbert here for his hearing, for this Thursday the 25th, as it might interfere with your course.

Will you please inform us when you have determined your investigations (and give any instructions that you may see fit,) so that we may proceed with the charges against Hulbert, and in regard to the Molly Justice case as well, if occasion is available to us along the line referred to above.

I have the honour to be
Sir,
Your obedient servant,

E. C. Warren Reeve
Chairman of the Police Commission

ECE:JC

PROVINCE OF BRITISH COLUMBIA
VICTORIA

IN YOUR REPLY REFER TO FILE C-95-4

November 29th 1943.

E. C. Warren, Esq.,
Reeve - Corporation of the District of Saanich,
Royal Oak, B.C.

Dear Sir:-

Rex v. Hulbert.

I have your letter of the 22nd instant which I received on my return from Vancouver at the end of last week and which accounts for the delay in answering same. In reply I may say that I have now received the reports of the Provincial Police regarding the statements alleged to have been made to them by Hulbert regarding the murder of Molly Justice, and if you still wish the boy examined by a mental specialist in Vancouver kindly let me know and arrangements will be made with the Gaoler accordingly. The reason Sergeant Elwell was asked to postpone the examination of this boy by Dr. Davidson was on account of information which had just been received at the time that the boy had made statements to the Provincial Police, and it was thought advisable to defer the examination until we had an opportunity of examining these statements and investigating the circumstances under which they were made.

The Provincial Police will be glad to co-operate with your Chief of Police in regard to this matter and furnish him with copies of the statements above referred to, if requested to do so.

I have the honour to be,
Sir,
Your obedient servant,

Deputy Attorney-General.

CORPORATION OF THE DISTRICT OF SAANICH

December 1st, 1943.

Colonel E. Pepler
Deputy Attorney-General
Parliament Buildings
Victoria, B. C.

Rex vs Hulbert
Your file no. C-95-4.

C 95 4

Dear Sir:

I thank you for your letter received November 30th, 1943. It is still the desire of this Department to have the boy Hulbert examined by Dr. Davidson, the specialist in Vancouver.

I have instructed Sgt. Elwell to get in touch with Dr. Davidson and set a date for this examination. As soon as this information is in our hands, we will inform you and would be pleased if you would make arrangements with the Gaoler at Oakalla.

It will be, I am sure, Dr. Davidson's desire to have this man examined at his Hollywood Sanitorium in New Westminster. Sgt. Elwell informs me Dr. Davidson is of the opinion that he would be able to complete this examination within a period of three hours. However, if this cannot be done in that time, we would be pleased if arrangements would be made accordingly.

I wish, at this time, to thank you and the Provincial Police Department for your co-operation with us in this matter, and the Chief of Police would be pleased if he could be furnished with the copies of statements made by Hulbert, as we feel these would be of material value to us in our investigation.

Our object, as was pointed out to you in my last letter, is to definitely clear up the matter of the "[illegible]" and to get the mental status of this boy.

Again thanking you for your cooperation.

I am,
Sir,

Yours truly,

E. C. Warren

Chairman, Police Commission.

ECW:JC

GEORGE A. DAVIDSON, M.D. (MAN.)
M.R.C.P. (LOND.), F.R.C.P. (CAN.)

GORDON H. HUTTON, M.D. (TOR.)
D.P.H. (TOR.), D. PSYCH. (TOR.)

721 MEDICAL-DENTAL BUILDING
VANCOUVER, B.C.

December 15, 1943.

Chief of Police,
Municipality of Saanich,
Royal Oak, B. C.

Dear Sir:

Re: Frank Hulbert (or Peppler)

As you know I interviewed Sergeant Ellwell regarding the above named on November 19, 1943 and arrangements were made to have me examine the patient at a later date. I again saw Sergeant Ellwell on December 4, 1943, the date I examined the prisoner.

This boy gave his age as 16 years. He complained that fogs seemed to get into his mind and said that when these are on he does not know exactly what he is doing half of the time. He says that they may occur at any time and further that they frighten him. Since being in Oakalla he says that these fogs occur frequently, even as late as the night before he was examined. He stresses the point that these have occurred during the past four years since his accident. He said further that in the last four years he has turned more into a crook, that he has been stealing, that he has carried on immoral behaviour with boys, etc.

I asked him about various symptoms such as one enquires for during a neurological examination. To practically all of these he answered that the symptom was present. For example, when being asked about the symptoms of headache, dizziness, ringing in the ears, faintness, shortness of breath, pounding of heart, sleeplessness, dreams, etc., he gives a positive answer to all of these and tends to magnify the complaint more than the usual patient.

He gave his personal history readily, saying that he reached grade four at 13 years. Following this he claims to have held about eight different positions. The longest time he admitted holding any one job was six weeks. According to Sergeant Ellwell this is incorrect.

He admits that he got into trouble once although the charge was not pressed because he took a watch that belonged to his uncle.

There are numerous discrepancies given in his history. On one occasion he told me that his father died when he was about three years of age and later he said that his father died about three years ago. Regarding his step-father he said that he drank once in a while but he never upset the home. According to Sergeant Ellwell this is incorrect. The boy told me that his brother had been in trouble for stealing a taxi and had been sentenced to eighteen months.

His history of the accident does not suggest that it was the type of accident that would produce complaints such as he now has. For example, he says that he remembers seeing the car that struck him and thinks that he had time to cross the street and that while crossing the street he saw a manhole. He says that he regained consciousness a minute or two after he was struck but he again lost consciousness and that he awakened on the way to the hospital. He then says that he again wakened while on the x-ray table, but following that remembers nothing more for two to four weeks. This is an unusual type of disturbance and I do not think that it fits in well with serious head injury.

In testing his intelligence one got the impression that he was deliberately not co-operating and that in other parts of the examination he was attempting to be just a little too cunning in trying to fool the examiner. Certainly, one got the impression in talking to him that his intelligence was even better than the average child in grade four and yet with simple tests such as one with grade four intelligence should be able to do easily, he failed rather badly.

One example of his untruthfulness is his story about his relations with Mitchell. He stated that Mitchell had been carrying on immoral acts with him during the past four months and prior to that time that he had never heard anything of this nature. At another time in the history he admitted that he had been carrying on immoral acts with small boys over the past four years. In further reference to his father who he said died when he was three years of age, he said that his father used to travel back East where he ran a 'gangster place' and he continues to say that his father used to steal and that his brother has followed his example.

[Personal details omitted]

Conclusions: I believe that this boy is probably of dull normal intelligence. I do not think that an intelligence rating at this time would be of any value as I think that he will deliberately attempt to mislead one. I felt satisfied at the time of doing the examination that he was telling the story as he thought it would best suit his case and there were points of discrepancy in his story that made it almost certain that he was deliberately being untruthful. I believe that the history that he gave was not reliable and the story is not that that usually follows serious head injury. I would like to have the opportunity of looking over the chart that was made at the hospital at the time of his injury if that is available. My impression is that this boy is making up a story that he thinks will benefit his case.

Yours sincerely,

Geo. A. [illegible]

GAD:WGB

C-93-4. January 14th, 1944.

Mr. Frank J. Hulbert Pepler,
P.O. Drawer 'O',
New Westminster, B.C.

Dear Sir:-

I beg to acknowledge receipt of your letter of the 11th instant addressed to the Deputy Attorney-General.

You were sentenced on the 3rd of June to the Industrial School for Boys and subsequently by Order-in-Council transferred to Oakalla Prison Farm. The outstanding cases against you are, I understand, in the hands of the Saanich Police and we have no information as to their intentions at the present time. In any case these charges do not affect your imprisonment under the "Juvenile Delinquents Act". Your term of imprisonment under that Act is an indefinite term and you will be detained until discharged pursuant to the provisions of the "Juvenile Delinquents Act".

Yours truly,

Ass't. Departmental Solicitor.

PHONE. E 1111—LOCAL. 413

OFFICE OF
PROVINCIAL SECRETARY
VICTORIA

November 20, 1944.

C-95-1

Memorandum for the Deputy Attorney-General.

re Frank Hulbert.

You will remember this case in which Hulbert was committed to the School on June 10, 1943, although he did not reach there until July 16th in that year. He was transferred to Oakalla on August 5th, 1943. He is still there because although his original term on one charge was for one year and it has expired, he is held on another charge where the sentence was indeterminate. His Mother of course wants him back, but we have told her that we are not prepared to make any recommendation to that effect. Of course he cannot be kept in Oakalla indefinitely, and I should be glad of your advice in the premises. Perhaps we might merely leave him there for another year at any rate.

P. Walker
Deputy Provincial Secretary.

Approved and ordered this 2nd day of August, A.D. 19 43

W.C. Woodward
Lieutenant-Governor.

At the Executive Council Chamber, Victoria,

PRESENT:

The Honourable

Mr. Pearson in the Chair.
Mr. MacDonald
Mr. Carson
Mr. Perry
Mr.
Mr.
Mr.
Mr.
Mr.
Mr.
Mr.

To His Honour
The Lieutenant-Governor in Council:

The undersigned has the honour to REPORT:-

THAT on the 3rd day of June, 1943, FRANK HULBERT was convicted by Henry C. Hall, Esq., K.C., Judge of the Juvenile Court in and for the Saanich Electoral District as constituted on the 18th June, 1920, for that he, the said FRANK HULBERT, at the Municipality of the District of Saanich, in the County of Victoria, on the 16th day of May, A.D. 1943, did unlawfully and indecently assault [J.M.] a female, contrary to the Criminal Code, and it was adjudged by the said Judge of the Juvenile Court that the said FRANK HULBERT be committed to the Industrial School for Boys for the Province of British Columbia, until discharged under the "Juvenile Delinquents Act":

THAT the said FRANK HULBERT is a material witness in a pending murder case:

THAT the Superintendent of the Provincial Industrial School for Boys reports the custodial equipment available at the said School is insufficient for the safe keeping of the said FRANK HULBERT:

THAT it is deemed expedient that the said FRANK HULBERT under sentence of imprisonment as aforesaid, be removed from the Provincial Industrial School for Boys at Port Coquitlam, Province of British Columbia, to the Oakalla Prison Farm Common Gaol in said Province:

AND TO RECOMMEND THAT under the provisions of sections 4 and 5 of the "Prisons and Reformatories Act", chapter 163 of the "Revised Statutes of Canada, 1927", the said FRANK HULBERT be removed from the Provincial Industrial School for Boys, Port Coquitlam, B.C., to the Oakalla Prison Farm Common Gaol in the said Province:

AND THAT the Superintendent of the said Provincial Industrial School for Boys do deliver over the body of the said FRANK HULBERT to the Warden of Oakalla Prison Farm Common Gaol aforesaid, and the Warden of the said Oakalla Prison Farm Common Gaol do receive the body of the said FRANK HULBERT and detain him until he is discharged in due course of law or until otherwise ordered:

AND THAT a certified copy of this Minute, if approved, be forwarded to the Superintendent of the Provincial Industrial School for Boys, Port Coquitlam, B.C., and to the Warden, Oakalla Prison Farm, Drawer "O", New Westminster, B.C.

DATED this 30th day of July A.D.1943.

K. C. MacDonald

acting Attorney-General.

APPROVED this 30th. day of July. A.D. 1943.

Geo. S. Pearson

Presiding Member of the Executive Council.

Approved and ordered this 30th day of May , A.D. 1945

Gordon McG. Sloan
Administrator.

At the Executive Council Chamber, Victoria,

PRESENT:

The Honourable in the Chair.

Mr. Hart
Mr. Maitland
Mr. Pearson
Mr. Anscomb
Mr.
Mr.
Mr.
Mr.
Mr.
Mr.
Mr.

E.P.

To His Honour
The Administrator in Council:

The undersigned has the honour to REPORT:—

THAT on the 3rd day of June, 1943, FRANK HULBERT was convicted by Henry C. Hall, Esq., K.C., Judge of the Juvenile Court in and for the Saanich Electoral District as constituted on the 18th June, 1920, for that he, the said FRANK HULBERT, at the Municipality of the District of Saanich, in the County of Victoria, on the 16th day of May, A.D. 1943, did unlawfully and indecently assault [J.M.] , a female, contrary to the Criminal Code, and it was adjudged by the said Judge of the Juvenile Court that the said FRANK HULBERT be committed to the Industrial School for Boys for the Province of British Columbia, until discharged under the "Juvenile Delinquents Act":

THAT pursuant to Order-in-Council No. 1071, approved August 2nd, 1943, the said FRANK HULBERT was transferred to Oakalla Prison Farm Common Gaol, there to be detained until discharged in due course of law or until further order:

THAT the Superintendent of the Industrial School for Boys recommends that the said FRANK HULBERT be returned to the Industrial School for Boys preparatory to being released:

AND TO RECOMMEND THAT under the provisions of the "Prisons and Reformatories Act", chapter 163 of the "Revised Statutes of Canada, 1927", the said FRANK HULBERT be transferred from Oakalla Prison Farm Common Gaol to the Industrial School for Boys at Port Coquitlam, in the said Province:

v. A.G. File
A.G.
C
B
11/6/45

AND THAT the Warden of the said Oakalla Prison Farm Common Gaol do deliver over the body of the said FRANK HULBERT to the Superintendent of the said Industrial School for Boys and the Superintendent of the said Industrial School for Boys do receive the body of the said FRANK HULBERT and detain him until he is discharged in due course of law or until otherwise ordered:

AND THAT a certified copy of this Minute, if approved, be

cl

[illegible] 61/2

forwarded to the Warden, Oakalla Prison Farm, Drawer 'O', New Westminster, B.C., and to the Superintendent of the Industrial School for Boys, Port Coquitlam, B.C.

DATED this 29th day of May A.D. 1945.

Attorney-General.

APPROVED this 29. day of May A.D. 1945.

Presiding Member of the Executive Council.

46791

PROVINCIAL GAOL RECORD.

Number of Previous Records [illegible]
Last Previous Record [illegible]
Name of Prisoner [illegible] Alias Frank Peplar.
Brought in by [illegible] Date [illegible] From [illegible] Time [illegible]

DESCRIPTION OF PRISONER.

Date of birth	June 13/27	Nationality	Orig.unknown. Canadian
Place of birth	Victoria B C	Age	16
Length of time in Canada	In B.C.	Height	5-9½
Date and place of entry		Weight	162
Whether in B.I.S.	Yes	Colour of hair	Dk Bro
Next of kin and address	Mother Mrs. F. J. Hulbert, 480 Davida St, Victoria B C	Colour of eyes	Bro
		Complexion	dk fresh
Name of father	John Thomas Peplar	Hair of face	C shaven
Maiden name of mother	Mary Jane Cockings.	Speak English	Yes
Recent place of residence	480 Davida St Victoria B C.	Education	Grade 4
Religion	?	Read or write	Yes
Trade or occupation	Misc. labouring jobs.	Finger-printed	AUG - 6 1943
M., S., W., or Sep.	Single	Photo taken	AUG - 6 1943
Service overseas	No	Victoria No.	27967 Q. 1037.
Liquor Abst. Temp. Intemp.	Abst	Drugs Abst. Addict.	Abst.

	Offence	Sentenced by	Date	Place	Sentence
1.	indec.asslt.-female	S.C.Hall PM	3-6-43	Saanich	to B.I.S.
1.	do	Order in Council #2071	2-8-43	Victoria	transfer to Oakalla
2.	buggery	S.C.Hall SM	20-1-44	do	1 yr. fr. 5-11-43
3.	do	do	do	do	do conc.
4.	do	do	do	do	do do
1.	above	Order in Council #417	30-5-45	do	to be released

Jan.	
Feb.	
Mar.	31
Apr.	30
May	31
June	30
July	31
Aug.	31
Sept.	30
Oct.	31
Nov.	30
Dec.	31
1945	
Jan.	31
Feb.	28
Mar.	31
Apr.	30
May	31
June	2
Total	445

13/44

Date of completion of full sentence [illegible] less [illegible] days of remission earned
Date discharged Order in Council 2-6-45 taken by Mother
Received the sum of $45.90 good conduct pay F J Hulbert Signature
Paid by A. Bow Witness G. T. [illegible]

To Assize, Victoria (witness). 29-10-43
Signature of escort [illegible]
To Hollywood Sanitarium, 1.30 P., 4-12-43
Signature of escort R. Kelly
To Police Court, Saanich, 9.30AM, 12-1-44
Signature of escort [illegible]
To
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Signature of escort

Deportation
Parole information
Indian agent
Military service
Waiver signed

Marks. Taken by
Vaccination
Nil
Moles
Round birthmark bk neck R.
Scars Rt. of cpy # 448-6. Left-handed.
Pitscar ov L eyebrow.
U scar side base R index
Round scar bk R elbow,
1 on upp arm.
Sev. down shin L leg.
Tattoos P'nd vert. base of some
sh ears med norm.
Lips & chin normal.

Prisoner's Effects.

Cash [illegible] 32
[illegible] 1 00
[illegible] 1 32
[illegible] 75
[illegible] 2 07
[illegible] 1 00
Bal 1 07

Miscellaneous

I certify the above to be correct; and as I understand that otherwise all mail must be placed in my effects until I am discharged, I request that anything addressed to or written by me during the time I am confined at the Oakalla Prison Farm be opened for censor.

Frank Hulbert
(Prisoner to Sign in full)

Received the above effects this 2nd day of June, 1945.

Certified correct.

F J Hulbert
(Signature of claimant)

PROVINCIAL GAOL RECORD.

51255

Number of Previous Records 1
Last Previous Record 46791
Name of Prisoner Frank Pepler
Alias Frank Hulbert
Brought in by Munic.Police [illegible]
Date 6-3-46
From Township of Esquimalt
Time 7.30am
MAR -. 1946

DESCRIPTION OF PRISONER.

Date of birth	June 13-27	Nationality	Orig.unknown Canadian	Vaccination	nil
Place of birth	Victoria,B.C	Age	18	Moles	round btlms bk neck R
Length of time in Canada	In B.C.	Height	6-0½"		
Date and place of entry		Weight	160		
Whether in B.I.S.	yes	Colour of hair	dk.brown	Scar-Bro. of Cpf#44864	
Next of kin and address	Mother Mrs C. Hulbert. 2066 Carnarvon St Victoria B C.	Colour of eyes	brown	Left handed pitscar ov L eyebrow C scar side base R index	
		Complexion	dk.fresh	round scar bk R elbow 1 R upp arm.	
Name of father	John Thomas Pepler	Hair of face	C shaven	sev.down shin l leg.	
Maiden name of mother	Mary Jane Cooking s	Speak English	yes	f'hd vert.Nose sl conc sn Tattoo Ears med.norm.Lips & chin normal	
Recent place of residence	2066 Carnarvon St Victoria	Education	grade 4		
Religion	C of E	Read or write	yes		
Trade or occupation	Misc.labouring jobs	Finger-printed	Aug 6-43 as Frank Hulbert #46791		
M., S., W., or Sep.	single	Photo taken	Aug 6-43 as		
Service overseas	no	Victoria No.	27967 P1037		
Liquor Abst. Temp. Intemp.	abst.	Drugs Abst. Addict.	abst.		

Offence	Sentenced by	Date	Place	Sentence
Contrib,Juv,Delinq	H C Hall JJC	4-3-46	Esquimalt	1 yr. H.L.

Date of completion of full sentence 3-3-47
Days of remission earned 18 11-1-47 Gaol
Date discharged 11-1-47 Expiration of sentence

Received the sum of $24.00 good conduct pay F. J. Pepler

Paid by [illegible] Witness [illegible]

Jan.	
Feb.	
Mar.	10½
Apr.	17
May	21½
June	14½
July	19
Aug.	25½
Sept.	30
Oct.	31
Nov.	30
Dec.	31
19	
Jan.	10
Total	240

MARKS TAKEN BY

PRISONER'S EFFECTS.

Cash sixty nine cents

14/6/46 Rec

Miscellaneous [illegible] card

To
Signature of escort

Deportation

Parole information

Indian agent

Military service

Waiver signed

I certify the above to be correct; and as I understand that otherwise all mail must be placed in my effects until I am discharged, I request that anything addressed to or written by me during the time I am confined at the Oakalla Prison Farm be opened for censor.

Francis James Pepler

Received the above effects this 11 day of January 19 47

Certified correct.

SAANICH POLICE DEPARTMENT

DETECTIVE BRANCH

REGINA VS. FRANK HULBERT & FRANK PEPLER

On October 25, 1957, at approx. 3:30 p.m. the following officers attended at the residence of Frank Hulbert @ Pepler on Ferguson Road in the Alberni District: Det. Sgt. Robin Stewart (Saanich) , Cons. Daniel Creally (RCMP), and Cpl. William Kerr (RCMP). At the time of arrival the accused was working on his residence. Det. Sgt. Stewart stated to the accused:"We are police officers and we would like to talk to you." The accused then took the officers inside of the cabin and stated: "This is one hell of a mess." Det. Sgt. Stewart then introduced himself, Cons. Creally and Cpl. Kerr and stated:"We are investigating the murder of Holly Justice which took place in the Municipality of Saanich in 1943. We have several questions to ask you, and we would also like to search your residence. If we are given permission to do so, we will start now." The accused replied: "Go ahead and search." A search of the residence was conducted by Detectives Ronald Coulter and Norman Baker (Saanich).

Det. Sgt. Stewart asked the accused if he would accompany the officers to the police office in Port Alberni, where we have certain exhibits we would like to show you.

Accused: Do you want me to change my clothes, or come the way I am, I am not very clean. Do you think I will be coming back, or not?

Stewart: In all probability you will be coming back.

Accused: OK.

The accused then left in company of Det. Sgt. Stewart, Cons. Creally and Cpl. Kerr. On arrival at the RCMP Detachment in Port Alberni the four went into a room approx. 12' x 14' which contained three chairs and a desk, unbarred windows. Det. Sgt. Stewart sat at the desk, the accused in front of the desk, Kerr and Creally on chairs.

Q I am Det. Sgt. Stewart, and this is Cons. Creally and Cpl. Kerr. I have a transcript of your evidence given at the preliminary hearing of Bill Mitchell, and I am going to warn you at this time. You do not have to say anything, but anything you do say

A I know, I know, may be used as evidence.

Q I am going to repeat the warning again to you. You do not have to say anything, but anything you do say may be used as evidence. Do you understand that warning?

A Yeah. Anything I say can be used. I know.

Q You understand. Do you know what it means?

A Yeah. I have heard it on television.

Q Do you remember the night of the JUSTICE murder?

A (Pause) No.

Q Do you remember the old firehall - that area in Saanich near the tracks?

A Yes, I used to play there. I lived near there.

Q Frank, you gave evidence against BILL MITCHELL who was charged with killing Holly JUSTICE. Would you like me to read your evidence from the transcript?

A Sure.

READ ALOUD BY STEWART - 1st PORTION

Q: Now, Frank, did MITCHELL really tell you that he had killed Molly JUSTICE?

A: No.

Q: what do you mean - would you explain?

A: I lied - it's all lies - MITCHELL never told me that he had killed Molly JUSTICE - I didn't like him, so I lied.

Q: Frank - do you mean to say that about 23 years ago you gave evidence in court about a story supposedly told to you by MITCHELL - and now you say that evidence was all lies?

A: Yes - I don't know why - I lied - yes - how I lied - I told the guard after I gave my evidence that I had lied. MITCHELL didn't kill her - McLEOD I think was the guard.

Q: How do you know that Frank?

A: I don't know.

Q: Do you remember the police officers who were investigating the JUSTICE murder?

A: I can remember ELWELL and a DONALDSON.

Q: Can't you remember what you said on the witness stand - anything at all? I'll read the rest.

A: No.

Q: But you say that the story you gave was lies?

A: Yes - nobody told me what I saidx in court then - I wish I could explain why I gave that evidence in Court then - can you tell me?

Q: Can you remember much back to that time, 1943?

A: I can remember a lot of things I don't want to.

Q: Would you explain?

A:

Q:

A:

[References to offences against young boys deleted.]

Q:

A:

Q:

A:

STEWART AND KERR LEFT ROOM

Q: Frank - can you remember anything in detail back at about the time MOLLY JUSTICE was killed?

A: Yes - how I remember - [Reference to the attack on J.M. is deleted.]

Q: Do you mean the girl you attacked about 4 months after the JUSTICE murder?

A: Yes.

Q: Where did this happen?

A: Not far from the tracks - about 200 yards from JUSTICE, Q; would you tell me everything you remember that happened that day Frank?

A: we were playing near the tracks - [Reference to the attack on J.M. is deleted.]

- I remember I took out my knife like this and held it up in front of her face - and said - let me, or you will get the same as I did to Justice.

Q: Frank, did you just use the words - as I did to JUSTICE?

A: I don't know, maybe (CRYING) - maybe I said the same as was done to MOLLY JUSTICE.

(KERR AND STEWART ENTERED)

My mother died before I could - there were many things I wanted to tell her.

Q: Frank, would you repeat to me exactly those words you said that you told that girl when you attacked her?

A: No - I told you once - you will have to remember - I won't repeat it.

Q: Frank - according to the transcript you gave a detailed account, apparently of how MITCHELL killed JUSTICE - a short while ago you said that MITCHELL never told you any such thing - am I right?

A: Yes.

Q: Can you explain then how you seemed to have considerebly knowledge of certain facts - like you said - so the transcript reads - that MITCHELL told you he hit her on the head with a rock?

A: I don't know - it's been a mystery - I wish I knew why I said that - other ~~thing~~ things.

Q: Can you recall that Pat SINNOTT asked you the second time you took the witness stand - he asked you if you still wanted to stick to your story about MITCHELL - and you said yes.

A: Yes - he told me - I wish I could go back then.

Q: Did you ever contact MITCHELL after the trial?

A: No - I never saw him again.

Q: Were you and MITCHELL good friends before the trial?

A: Yes, we did things together.

Q: Queer things, Frank?

A:

[Answer omitted.]

Q:

A: Yes, but I don't like those words - he owed me some money - I wanted to get back on him.

Q: Did you have anything to do with the killing of Molly JUSTICE?

A: (NO ANSWER).

Q: Do you know if you did?

A: I can't remember - if I did I would tell you.

(KERR AND STEWART LEFT)

A: I sure have done some terrible things - that girl. I don't know why I threatened her with my knife - I hate violence - especially knives - I don't like them - some times - couple times - I was mad - angry - those times I couldn't remember what I did - but I always carry a knife - this one - or another one.

(KERR AND STEWART BACK)

Q: Frank we won't be keeping you - you may be charged with perjury - public mischief.

A: I'd like to clear him - is Mitchell dead?

Q: We don't know for sure.

A: Boy this isn't like on television - no bright lights - just talking.

Form No. 11

FAMILY AND CHILDREN'S COURT

Warrant to Apprehend

CANADA:
In the Family and Children's Court of
British Columbia:
Municipality of the District of Saanich
Holden at Victoria

IN THE MATTER OF
THE JUVENILE DELINQUENTS ACT
CHAPTER 160, R.S.C. 1952

TO all or any Peace Officers in the Province and to any Probation Officer of the Family and Children's Court:

WHEREAS information has this day been laid before the undersigned that FRANK HULBERT alias FRANK PEPLER

of Port Alberni. , in the Province of British Columbia,

between the 16th day of May 1943 and ~~on~~ the 30th day of May , A.D. 1943 , at Municipality of Saanich ,

in the Province aforesaid, unlawfully did commit a delinquency, in that he, the said FRANK HULBERT alias FRANK PEPLER did commit a delinquency to wit, public mischief, by causing peace officers. namely members of the Police Department of the Municipality of Saanich, to enter upon an investigation by making false statements to them with intent to mislead, that accused one William Mitchell of having committed an offence to wit the murder of Annette Margare Clive Justice, contrary to the Criminal Code.
CONTRARY TO THE FORM OF STATUTE IN SUCH CASE MADE AND PROVIDED.

THESE ARE THEREFORE TO COMMAND YOU, in Her Majesty's name, forthwith to apprehend

the said FRANK HULBERT alias FRANK PEPLER , and to bring him before

me or some other Judge to answer unto the said charge and to be further dealt with according to law.

GIVEN under my hand at City of Victoria , British Columbia, this 26th

day of October , A.D. 19 67.

Judge of the Family and Children's Court of British Columbia.

[illegible]

[illegible]

[illegible]

October 27, 1957.

On October 27, 1957, Detectives R. Coulter and W. [illegible] Baker of this department in company with Cons. [illegible] of the [illegible] to the home of the accused on Ferguson Road in the [illegible] District and there arrested the accused at 2:45 p.m. by warrant on a charge of public mischief. On arrival at the residence the accused was just getting out of his automobile.

BAKER: I am Det. Baker, this is Det. Coulter and this is Cons. [illegible]
You are Frank [illegible]?

ACCUSED: Yes.

BAKER: This is a warrant for your arrest. (reads warrant). You are under arrest. You do not have to say anything, but anything you do say may be used as evidence.

ACCUSED: I wish to hell I had been man enough to admit it at the time.

BAKER: Admit what?

ACCUSED: That everything I said about Mitchell at the trial was lies.

BAKER: Did you ever tell anybody else this?

ACCUSED: Yes, my mother. But she said it was all over with then, and not to do anything about it.

The accused was then transported to Nanaimo where he was lodged in their cells overnight. He was taken from the cells the following morning, October 28, 1957, and transported to Saanich Police cells.

SAANICH POLICE DEPARTMENT

SPECIAL REPORT

To: Det. Sgt. R. Stewart

Date: October 31, 1967

Re: Regina vs. Frank Hulbert @ Pepler

REPORT

On instructions of the Det. Sgt. I entered the Saanich Police cells at approx. 11:00 a.m. on Saturday, October 28, 1967. At this time I was wearing a pair of slacks and a green shirt. There was no one else in the cell block. At approx. 12:30 p.m. that date another person was brought into the cells. After the officers left (Stone, Ledson), this person sat down opposite me at the table in the cell block. He said he had just been brought down from Port Alberni on a warrant for public mischief, and said his name was Frank. He went on to say that this warrant was for something that happened 24 years ago. He had accused another man of murdering a girl and the reason he did that was because this man had done something to him and he was trying to get back at him. He wanted to clear this thing up, he had lied about it. He had been the star witness for the crown because he had said that the other person had killed the girl. I asked him what girl, and he replied "Her name was MOLLY JUSTICE." He went on to say that the reason he had said this was because he had been picked up for questioning some months after the murder for threatening a young girl [Reference to the attack on J.M. is deleted.]

It was at this time that he had named this other person for the murder. He was now sorry that he had done this and he wanted to clear this up, as he had lied about the whole thing. Stated he had been in and out of jail a few times. I asked him if he had known the girl, and he replied, No, I have never seen her. He went on to say that he wanted to clear this other man's name and he didn't know really why he had told the lies that he did and that he wished he had been man enough to clean it up before now. I think that the police must know more about this and they must think I did it. I think that they will probably charge me with perjury as well as public mischief. I think that they must know more about this, otherwise they would not have gone to all this trouble. They must think I did it, but I can't remember too much. I think that it is because I knew more about the evidence in court than even they did. Maybe I did do it. It seems to me I must have, because how else would I know so much about it, but I don't remember. It is so long ago, it is hard for me to remember anything about it, but accusing this other man for the murder has been on my mind for a long time. I wish I had been man enough to clear this up before now and tell the truth. LUNCH WAS BROUGHT IN TO THE CELLS AT THIS TIME. One knife and three forks were brought in. We were both sitting at the table when he said that it was kind of stupid that they go to all this trouble of taking my shoelaces away so that ' can't do anything, but they leave me with a knife. He picked up the knife, held it in his hand, brandished it, and said, well I wouldn't use this on you.

While we were eating lunch he asked me what I was in for, and I replied for B E & theft of a drug store in Vancouver. His only reply was you won't get much in a drug store unless you're after drugs. He wanted to know when I was picked up, and I stated this morning.

After lunch the accused went and lay down on his bunk. About 10 minutes later he got up and began pacing up and down the cellblock. He said somebody just told me they saw me standing there with a rock in my hand, and I could even see the rock myself, I can't remember if I did it or not, but I must have, but I just can't remember for sure. It seems strange that I know so much about the murder if I didn't do it. This is what has got me worried. Something tells me I must have, and yet I don't think I did. I think maybe if I talk to the police detectives it might all come back to me. I'm not sure whether I did it or not. I just wish I could get it all straightened out, because it bothers me not to know for sure. Maybe if the police took me back over the area again maybe it might all come back to me, maybe I might remember something. I just wish I could remember. I must have done it. Possibly I should try and get hold of the police that were on the case at the time, maybe it will come back to me then. I have only ever loved one girl, and something terrible happened to her. The police must think I did it or know more about it, this is why they arrested me. I just wish I could remember.

At this time reporting officer asked to get out to use the phone so I could get out for the weekend. He stated "What's the matter, can't you want to spend the week-end with a murderer." He then called, Hey, officer. There was no reply, so I called. An officer came to the window, and he stated, I want to see the detectives.

We then returned to sit at the table, where he sat for a few minutes with his head in his hands, and then stated, It is awful to think that you might have killed a girl. I guess it can't be much fun to be locked up with a murder. He then asked, Do the detectives carry guns. I replied, yes, and he then said, Well maybe when they take me out to the railway tracks I should make a run for it and get it all over with.

A few minutes later this man left the cells.

William Robertson Crossan
Cons. #24.

SAANICH POLICE DEPARTMENT

DETECTIVE BRANCH

REGINA VS. FRANK HIBERT & FRANK PFEIFER

Murder of: AMELIA MARGARET OLIVE JUSTICE
January 18, 1943
Saanich, B. C.

WITNESSES

ROBIN JUSTICE 848 Swan Street, Saanich. 385-7952	Will testify that in January of 1943 he was living at 861 Brett Avenue in Saanich with his mother and sister, AMELIA MARGARET OLIVE JUSTICE. Will state that his sister was murdered the evening of January 18, 1943, and that funeral arrangements were handled by Sands Mortuary in Victoria. (Burial services were held on February 10, 1943, and the body buried Section A, Plot 7, Grave 3, at Royal Oak Burial Park.)
SGT. A. H. CLARKE Saanich Police Identification Section	Will produce aerial photographs taken in 1968 of the murder scene and general area.
IRVING STRICKLAND Photographer Victoria Daily Times 382-3131	Will testify that he was a newspaper photographer in January of 1943 and that he was called to take photographs of the body of Molly Justice at Sands Funeral Home, will enter same as exhibit. Will also testify that he was called to scene of murder next day and that he took photographs of the scene and can identify same. Also took photographs of the body following autopsy, showing numerous wounds and bruises, can identify same. Can testify as to secluded bushy area at scene and also general area.
DR. JOHN H. MOORE 2941 Seaview Dr., Saanich home: 477-1125 work: 383-6331	Presently on vacation in Ireland. Made a post mortem examination on the body of AMELIA MARGARET OLIVE JUSTICE on January 21, 1943 — see attached reports. Also testified at inquest, preliminary hearing and Assize Court trial of William Mitchell. Can comment on majority of wounds being to right side of body (May be inference that murderer is likely left handed.)
ARTHUR LOGIE Saanich Fire Department	Will testify as to finding parcels on railway tracks, etc., as per evidence given at inquest, preliminary and Assize Court trial of Mitchell. Was present with Sgt. Elwell and Cons. Smith when body of JUSTICE found near tracks. Can testify as to general seclusion and bushy area at scene and in general area.
MARIE LOGIE Wife of above	Was present with husband when parcels found and taken home. Testified at trial of Mitchell.

VICTOR SMITH
1650 Broadmead
home: 477-1586
work: 382-9261

Will testify that at the material time in 1943 he was a member of the Saanich Police Department and was present at the scene on January 18, 1943, and that he found the body of the murdered girl near the tracks while searching with Sgt. Elwell and Logie. Will describe location of body, etc., also identify photo as that of body he found. See inquest report attached. Will state that he was arresting officer of Hulbert on May 16th, 1943, following his attack on [J.M.] Hulbert was arrested as he fled out the back door of his home at 15 Lurline Street in Saanich - approx. one-half mile from the location of the murder and the attempt rape. HULBERT was brought to the police office and questioned re the attack on MARRISON. During this questioning Cons. Smith asked HULBERT if he had said to the girl "If you don't do what I want, you'll get the same as I did to Molly JUSTICE." When Smith questioned HULBERT on this remark, HULBERT said "I may have said it, but I didn't mean it," and then told his story about Mitchell telling him about committing the murder. Subsequently Cons. Smith and Elwell were in the presence of HULBERT when he told them that he would show them where MITCHELL had told him he had waited for Molly JUSTICE. They then drove to Seymour Street near the old Saanich Fire Hall where they got out of the car and HULBERT then led them down a path by the Seymour Street bridge and on to the railroad tracks. While walking down the railway tracks the two officers hesitated, and HULBERT said "No, no, not here, down this way further," and he then led them past where the body had been found to a large rock beside the tracks and told them "This is where Mitchell told me he hid." This was the rock where the two parcels which the murdered girl had been carrying were found, and it was also the start of evidence indicating a struggle had occurred the night of the murder. There was evidence of a struggle from this point to where the body was found. They then returned to where the body had been found and the two officers stopped at this point. Elwell then asked HULBERT if he knew where the gloves and purse had been hidden, and HULBERT replied "Sure, I'll show you." Elwell and HULBERT then left the scene walking down a trail which led to where the articles had been found in February.

[J.M.]

This is the girl who was attacked May 16th, 1943, in the same area as JUSTICE was murdered. It was as a result of this attack that HULBERT was arrested by Cons. Smith. See attached statement.
Will testify that per statement when she was being attacked in immediate vicinity of where Justice body had been located, HULBERT took out a fold-up knife, bared the blade, put the knife to her throat and told her if she didn't shut up he would do the same thing to her as he did to MOLLY JUSTICE.

CECIL PEARCE 954 Falmouth, Saanich 386-3808	Was a member of the Saanich Police Department in 1943. Will testify that he took possession of the purse and cigarette case which were found under a bucket near the overflow, and that he took them to Vancouver, and turned them over to Inspector Vance of the RCMP. Can describe general area, his part in investigation, etc.
JACK LOCKIE Department of Commercial Transport, Parliament Buildings, Victoria, B. C.	Was a member of the B. C. Provincial Police stationed at Victoria, B. C., in 1943. Was with Al Quinn of the force when they escorted HULBERT from Victoria to Vancouver City Police on November 14, 1943, following HULBERT's evidence given at trial of MITCHELL. It was to LOCKIE AND QUINN that HULBERT confessed murdering JUSTICE. See attached statement.
A. W. QUINN 7620 Rosewood, Burnaby 524-2124.	Was a member of the B. C. Provincial Police stationed at Sooke, B. C., in 1943. Was with LOCKIE on the escort. See attached statement.
LOUIS T. [illegible] Nanaimo, B. C.	Was employed with HULBERT and MITCHELL at B. ... Point in 1943, later joined Victoria City Police force and it was to him that HULBERT confessed that he murdered MOLLY JUSTICE. See evidence at perjury trial, page 84, etc.
DANIEL GERARD [illegible] RCMP, Victoria.	See attached reports, also transcript perjury trial.
WILLIAM [illegible] KERR RCMP, Nanaimo	See attached reports, also transcript perjury trial.
ROBIN STEWART, Det. Sgt., Saanich Police	See attached reports, also transcript perjury trial.
WILLIAM ROBERTSON [illegible] Saanich Police.	This officer was placed in cells when Hulbert was being returned from Port Alberni under arrest on public mischief warrant. See attached statement.

Re Frank Pepler

Monday, May 17th, 1943 I met Frank Pepler at the City police station about 9.30 a.m. I asked him if he could tell me where Molly Justice was killed. He said he only knew what Mitchell had told him, so we went out Douglas Street to the Saanich fire hall to the railroad track and stopped the car. Getting out, we went down the side of the bridge to the track, walking along the track towards Vernon Avenue.

We stopped along the track and I asked if this was not the place. He looked around and said "it is further along", so we carried on until we came to a large rock on the left side of the track. He stopped and said that this was where Mitchell said he hid to wait for the girl to come along.

I asked him if he knew where her purse and gloves and cigarette case were. He told us that Mitchell had hid them along the other path, so Sergeant Elwell went along the path with Frank to show him where they were hidden. I stayed behind to look for Molly's earring that was never found in January. the time of the murder.

The next day I picked Frank up at the City police station and again went to the scene to look around. Frank asked me as we were standing on the track what kind of a gun I had. I told him it was a Smith & Wesson 455 - 7 inch barrel. He asked me if he ran would I shoot him. I told him I was here as his guard and if he did not stop, if he ran, I would shoot at him.

The next morning I was called in to the Chief of Police office to hear that I was taken off the case as I was hostile to a juvenile.

H Smith

BRITISH
COLUMBIA

CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL

CROWN COUNSEL POLICY MANUAL

TITLE CORE POLICY	DATE MARCH 11/96	FILE No.	No. CHA 1
SUBJECT CHARGE APPROVAL GUIDELINES		REFERENCE BMC Feb. 29/96	
		CROSS-REFERENCE QUA 1.1 QUA 1.2 DIS 1	

INTRODUCTION

The decision to initiate a prosecution is one of the most important duties of Crown Counsel. The Crown Counsel Act authorizes Crown Counsel, under the direction of the Assistant Deputy Attorney General, to "examine all relevant information and documents and, following the examination, to approve for prosecution any offence or offences that he or she considers appropriate" (section 4(3)(a)).

The independence of this function is confirmed by section 5 of the Act. Any intervention by the Attorney General or Deputy Attorney General with respect to the approval or conduct of a prosecution "must be given in writing to the Assistant Deputy Attorney General and published in the Gazette."

In discharging their charge approval responsibilities, Crown Counsel must be fair, independent, and objective.

Crown Counsel's independence must also be balanced with measures of accountability. Principled charging decisions are assured when Crown Counsel experienced in assessing evidence exercise their discretion in accordance with Branch public policies when they review the available evidence and applicable law.

The charging standard and procedures to be followed are set out below.

CHARGE APPROVAL STANDARD

There are two components to the charge approval standard. The evidence available must be examined to determine:

1. whether there is a **substantial likelihood of conviction** and, if so,
2. whether a **prosecution is required in the public interest**.

During the charge approval process Crown Counsel does not have the benefit of hearing the testimony of Crown witnesses, either in direct or cross-examination nor the defence evidence, if any. During the course of a preliminary hearing, or when preparing for trial, the Crown's case may be materially different than counsel's initial assessment at the early charge approval stage. Therefore, the requirement to meet the charging standard continues throughout the prosecution.

Exceptional circumstances may require that a prosecution proceed even though the usual evidential threshold may not be satisfied at the charge approval stage. Such circumstances will most often arise in cases of high risk violent or dangerous offenders or where public safety concerns are of paramount consideration. Such cases must be discussed with Regional Crown Counsel or designate prior to making the charging decision.

Evidential Test - Substantial Likelihood of Conviction

A substantial likelihood of conviction exists where Crown Counsel is satisfied there is a strong, solid case of substance to present to the Court. In determining whether this standard is satisfied, Crown Counsel must determine:

1. what material evidence is likely to be admissible;
2. the weight to be attached to admissible evidence;
3. viable, not speculative, defences.

Public Interest Test

It has never been the rule that all criminal offences which meet the evidential test must automatically be the subject of prosecution. Once Crown Counsel is satisfied that the evidential test is met, counsel will then determine whether the public interest requires a prosecution. Hard and fast rules cannot be imposed as the public interest is determined by the particular circumstances of each case and the legitimate concerns of the local community. In making this assessment, among the factors Crown Counsel will consider are the following:

1. Public Interest Factors in Favour of Prosecution

It is generally in the public interest to proceed with a prosecution where the following factors exist or are alleged:

(a) the allegations are serious in nature;
(b) a conviction is likely to result in a significant sentence;
(c) considerable harm was caused to a victim;
(d) the use, or threatened use, of a weapon;
(e) the victim was a vulnerable person;
(f) the alleged offender has relevant previous convictions or alternative measures;
(g) the alleged offender was in a position of authority or trust;
(h) the alleged offender's degree of culpability is significant in relation to other parties;
(i) there is evidence of premeditation;
(j) the offence was motivated by the victim's race, national, or ethnic origin, colour, religious beliefs, sex, age, mental or physical disability, political views, or sexual orientation;
(k) there is a significant difference between the actual or mental ages of the alleged offender and the victim;
(l) the alleged offender committed the offence while under an order of the Court;
(m) there are grounds for believing that the offence is likely to be continued or repeated;
(n) the offence, although not serious in itself, is widespread in the area where it was committed.

2. Public Interest Factors Against a Prosecution

It may not be in the public interest to proceed with a prosecution where the following factors exist or are alleged:

(a) a conviction is likely to result in a very small or insignificant penalty;
(b) there is a likelihood of achieving the desired result without a court proceeding. This could require an assessment of the availability and efficacy of any alternatives to prosecution. Crown Counsel need not conclude, in advance, that a prosecution will proceed in the public interest if a referral for an alternative measure is not acceptable. Information with respect to the suitability of a candidate for diversion or alternative measure is a factor to be taken into consideration by Crown Counsel in reaching a final charging decision;
(c) the offence was committed as a result of a genuine mistake or misunderstanding (factors which must be balanced against the seriousness of the offence);
(d) the loss or harm can be described as minor and was the result of a single incident, particularly if caused by misjudgement;
(e) the offence is of a trivial or technical nature or the law is obsolete or obscure.

3. Additional Factors to be Considered in the Public Interest

   (a) the youth, age, intelligence, physical health, mental health, and other personal circumstances of a witness or victim;
   (b) the personal circumstances of the accused, including his or her criminal record;
   (c) the length and expense of a prosecution when considered in relation to the social benefit to be gained by it;
   (d) the need to maintain public confidence in the administration of justice;
   (e) the time which has elapsed since the offence was committed.

REPORT TO CROWN COUNSEL

In order that counsel may appropriately apply the charge approval standard, the Report to Crown Counsel (RTCC) must provide an accurate and detailed statement of the evidence available. The following are the basic requirements for every RTCC:

1. a comprehensible description of the evidence supporting each element of the suggested charge(s);
2. where the evidence of a civilian witness is necessary to prove an essential element of the charge (except for minor offences), a copy of that person's written statement;
3. necessary evidence check sheets;
4. copies of all documents required to prove the charge(s);
5. a detailed summary or written copy of the accused's statement(s), if any; and
6. accused's criminal record, if any.

There may be cases where the RTCC will not comply with these standards. The RTCC should then be returned to the investigator with a request for additional information before a charge is approved. If the accused is in custody, Crown should not seek to detain the accused in custody without sufficient written material from the police to justify both the charge and the detention.

If the offence is serious and there is sufficient evidence to charge the detained accused but insufficient information to determine Crown's position on release, resort may be had to s. 516 to adjourn the show cause. This should be used only where it appears necessary to protect the public.

In all cases, in applying the charge standard Crown Counsel's important obligations are to:

1. make the decision in a timely manner recognizing the need to expedite the decisions where an accused is in custody or where an RTCC requests a warrant. This may require that all warrant requests and all files involving violence are separately, and immediately, addressed;
2. record the reasons for the decision; and
3. where appropriate communicate with those affected including the police so that they understand the reasons for the decision.

BRITISH
COLUMBIA

CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL

CROWN COUNSEL POLICY MANUAL

TITLE CORE POLICY	DATE DRAFT	FILE No.	No.
SUBJECT CHARGE APPROVAL - POLICE APPEAL REGARDING CROWN DECISION		REFERENCE JRC #61, DPI #7 CROSS-REFERENCE PRI 1 CHA 1	

Inherent in the charge approval process is an invitation to the police to discuss reasons for rejection of a charge with Crown Counsel who rejected the charge. It is the responsibility of the police to contact the Administrative Crown should they wish to discuss reasons for rejecting a charge. While protocols with the police may be developed at the local level, each Crown Counsel office should be the initial focus for police concerns.

A Chief Constable or Officer in Charge of a detachment who disagrees with a decision not to lay a charge and who is unable to resolve that disagreement following a full discussion with Administrative Crown Counsel, may ask Regional Crown Counsel for a review of the decision. Regional Crown Counsel shall ensure that such a review occurs and advise the senior officer of the decision.

A Chief Constable or Officer in Charge of a detachment who disagrees with the decision of Regional Crown Counsel may ask the Assistant Deputy Attorney General to review the decision. If asked, the Assistant Deputy Attorney General will review the decision and advise the senior officer of his decision.

In addition to the foregoing, a Chief of Police or Deputy Commissioner of the RCMP in the province may appeal a charge approval decision directly to the Deputy Attorney General, but only if the situation is urgent or a matter of significant public interest or public policy.

The Criminal Justice Branch recognizes the responsibility of the police to lay an Information where they have reason to believe any part of the Crown's decision making process has been tainted by corruption or impropriety. It is expected this procedure would only be invoked upon exhaustion of the appeal process by a Commanding Officer. An Information, therefore, would be sworn by, or on behalf of, a Chief Constable or the Deputy Commissioner, RCMP.

It is expected that the Deputy Attorney General would always be notified in advance of the police intention to swear an Information in these cases.

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Where an Information is sworn by the police on behalf of a Chief Constable or the Deputy Commissioner, RCMP, following exhaustion of the appeal process, both the Regional Crown Counsel and the Assistant Deputy Attorney General must be immediately advised.

In any other case where an Information has been sworn by the police contrary to a decision of Crown Counse the private prosecutions policy applies, see PRI 1.

THE LANCET

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EDITORIAL

Guilty innocents: the road to false confessions

Miscarriages of justice can arise in various ways, the most common being mistaken identification, perjury, unreliable forensic scientific evidence, and self-incriminating statements made by innocent people.[1,2] Self-incriminating statements, commonly known as "false confessions", have captured public interest with the quashing of convictions of several individuals serving long prison sentences for terrorist acts. This kind of error provokes public anger and dismay directed towards the criminal justice system, and rightly so. The prevention of such miscarriages is mainly the responsibility of parliament, of the police, and of the judiciary. Parliament is responsible for legislation covering the arrest and interrogation of suspects and criminal procedure in general. The police, acting within the framework of the relevant law, must diligently seek the truth, while being aware of the many ways in which initial assumptions and statements may prove to be misleading. The judiciary have a heavy responsibility to ensure that juries are aware of the unreliability of certain kinds of evidence. The media and public opinion are also involved, since the principle that criminal convictions must not be made where there is a reasonable doubt can only be acted upon if society clearly accepts that it is better to allow a guilty person to go free than to risk that an innocent person be condemned. Even this principle must have its limits in terms of relative probabilities, thereby emphasising the need for efficient, unbiased police investigations, forensic science services, and criminal trial procedures.

False confessions leading to mistaken convictions nearly always take place during interrogation in police custody. In England and Wales, interrogation was subject to the Judges' Rules dating from 1912 and revised in 1918 and 1964. After the Confait case, these rules were criticised as providing inadequate legal protections to vulnerable suspects. Three adolescents who, while in police custody, had made detailed statements admitting their direct involvement in the strangling of a male prostitute, were exonerated more than two years after their convictions for murder. The false confessions were subsequently thought to have been due to their mild mental handicap and to being frightened while under intense interrogation. A Royal Commission set up after the case to assess pre-trial criminal procedure recommended extensive changes in the law concerning interrogation,[3] and these recommendations led to the Police and Criminal Evidence Act of 1984, supplemented by four Codes of Practice,[4] that provided detailed guidelines for police conduct. The new legal framework specifies "reliability" as the essential criterion for admissibility of a confession as evidence, rather than the earlier test of "voluntariness". Strict limits are placed on repeated or lengthy questioning and on interrogation of suspects at night. The police are required to keep a detailed custody record and the process is placed under the supervision of a senior policeman known as the custody officer. In certain cases, notably mentally handicapped persons and adolescents, the presence of an "appropriate adult" is mandatory. Thus, it is recognised that certain vulnerable people may make apparently voluntary self-incriminating statements which subsequently can be shown to be erroneous, and that this behaviour is in some way related to the interview technique employed by the police officer. Incidentally, criminal proceedings under Scottish law seem to have been less prone to this kind of miscarriage of justice, since uncorroborated self-incriminating statements, subsequently withdrawn, would not normally be sufficient basis for securing a conviction in a Scottish criminal court. In England, concern that unreliable convictions based on false confessions are still not being examined in an open and unbiased manner has led to renewed calls for an independent authority to review such cases.[5]

Doctors and psychologists are deeply implicated in the phenomenon of false confessions. The psychological dimension was emphasised in an early study on miscarriages of justice by Borchard,[3] who found that persuasion or suggestion directed at a suspect of low intelligence by a person in authority was a more potent cause of false confessions than were overt coercion, threats, or violence. Brandon and Davies,[6] who studied 70 cases of "wrongful imprisonment", widened the concept of vulnerability to false confessions; they found that psychological "inadequacy" could induce abnormal susceptibility to suggestion. More specifically, the reliability of statements of people who are mentally ill is especially suspect, since the confession may be related to a delusional belief in a patient with a schizophrenic disorder, or to pathological guilt feelings in a severely depressed individual. A person with mental retardation may make a statement because of a mistaken understanding of the facts or the nature of criminal responsibility—eg, a mentally retarded defendant believed himself to be guilty since he had not intervened to prevent the commission of a criminal act by another person.[7]

These risks were recognised in an addition made to the Criminal Justice Mental Health Standards of the American Bar Association, drawn up by a task force of lawyers and psychiatrists in 1988, which called for obviously unreliable statements not to be admitted as evidence and for all statements made by mentally disabled persons to be subject to expert testimony by mental health professionals.[8] The standard also recognises that the mentally disabled suspect has "increased vulnerability . . . naivety, ignorance, confusion, suggestibility, delusional beliefs and extraordinary susceptibility to pressure", so involuntary statements may be made without undue coercion being applied by the police. However, the US Supreme Court has ruled, in a case in which a confession was clearly the product of a "command hallucination", that the evidence was admissible, since the police had used no form of coercion.[9] By contrast, the Court of Appeal in England has ruled that special care must be taken when considering the confession of a person with a "significant degree of mental handicap", which means any handicap likely to influence the reliability of a statement.[10]

A general understanding of the phenomenon of "false confessions" has come about via a series of studies over ten years by Gudjonsson,[11] a forensic psychologist and former police officer. Gudjonsson has provided good empirical evidence to support a theoretical construct of *interrogative suggestibility*—the variable degree to which individuals tend to acquiesce to authority during questioning. This is a specific instance of the more general phenomenon of obedience to authority, the subject of Milgram's[12] earlier pioneering research, which also showed how this tendency varied in degree between individuals. Confession while under interrogation should be distinguished from voluntary or spontaneous confession. Police officers are well aware that any unsolved criminal case with extensive media coverage can bring about false confessions. Several hundred individuals confessed falsely to the Lindbergh kidnapping. Kassin and Wrightsman[13] suggested that voluntary confessions could be due to a morbid desire for notoriety, to an unconscious need to be punished in order to expiate guilt over previous wrongdoings, or to delusional ideas. Some people "confess" to protect the real offender, who may be a close family member or a friend; in adolescents especially this may be part of an anti-authority "honour code".

Kassin and Wrightsman[13] also suggested, mainly on the basis of anecdotal evidence, that there are two distinct types of false confessions during interrogation, the first based on overt compliance under interrogative pressure, with retention of internal cognitive control (the suspect confesses knowing he or she is innocent), and the second based on suggestibility (the suspect comes to believe in his or her guilt under questioning). Gudjonsson has been able to observe directly many such cases and to measure separately individuals' "compliance" and "suggestibility". His data suggest that there is no clear distinction between compliant and suggestible individuals who confess falsely, but it is nevertheless useful to distinguish two psychological mechanisms that may be provoked in vulnerable individuals subjected to interrogation: in *coerced-compliant confessions* the suspect yields to the short-term benefits (freedom from further interrogation and conflict, gaining approval from the police) without realising the long-term risks of confessing; and in *coerced-internalised confessions* suspects come to believe in their guilt, either because they have no clear memory of the events concerned, owing to traumatic or toxic amnesia, or because they begin to mistrust their own recollections.[14] The memory distrust syndrome was probably the basis for extraction of self-incriminating statements from political prisoners under totalitarian regimes, leading to the extraordinary statements of guilt in the show trials of the former Soviet Union and other communist countries. Gudjonsson's model, together with the psychiatric observations and insights of MacKeith, is an important advance in understanding of a phenomenon that can undermine confidence in the criminal justice system.

There is another more sobering and worrying side to medical involvement in these cases. Several of the individuals who confessed and who subsequently claimed that the confession was obtained under pressure and was untrue, had been subjected to forensic psychiatric examinations. On nearly every occasion the psychiatrists concerned, sometimes senior and respected specialists, phrased their reports in terms which clearly suggested that the guilt of the suspects was established and the psychiatric analysis was merely a way to explain the individuals' involvement in terms of their antisocial tendencies, immaturity, and "influenceability". In none of the original psychiatric reports was the possibility of a false confession examined from a medical or psychological viewpoint. Those who claim that Gudjonsson and MacKeith are simply restating well-known and long-established patterns of behaviour should ponder the almost complete failure of psychiatric experts to address the problem adequately in the past when they were faced with distressed individuals proclaiming their innocence. Although it is not the psychiatric expert's role to reach conclusions about guilt or innocence, psychiatrists have an ethical duty not to misuse their authority by implicitly supporting the prosecution's case.

Another medical failure, established retrospectively in several of the cases of erroneous convictions, was the inadequacy of medical interventions by police surgeons during police custody, and more generally of medical and psychiatric care during the pre-trial period. *The Lancet* has previously referred to a police doctor's action at a crucial point in the interrogation of Carol Richardson and to the general problem of the conflict of interests when doctors provide consultation to people in police custody.[15] Another example of a missed medical opportunity was the psychiatric assessment and management of Judith Ward, when in a state of depression, bewilderment, and suicidal feelings she began to realise the awesome consequences of having falsely confessed to planting a bomb in a coach carrying soldiers. It seems that doctors providing care in police stations and remand prisons risk being influenced by the state of tension created by the police investigations and do not always strive to maintain their neutrality and unbiased concern for the suspect as a patient. The European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment has repeatedly stated that individuals undergoing police interrogation must have access to a doctor and that medical interviews should take place out of earshot and out of sight of police officers; detained persons should also have the right to call a doctor of their own choice.[16] An independent medical intervention during the period of police custody would do much to prevent undue police pressure or coercion, to diagnose obvious types of psychiatric illness, substance abuse, or mental retardation, and to stop the process leading towards pathological acquiescence or the memory distrust syndrome.

Now that many of the earlier miscarriages of justice have been dealt with, the main aim should be to prevent any more wrongful convictions based on false confessions. There is no simple way to detect individuals who are vulnerable to the processes leading to false confessions. Gudjonsson has developed two scales designed to measure objectively how likely an individual is to yield to pressure during interrogation and to leading questions.[17,18] These methods provide a powerful and innovative research tool, but practical application in forensic assessments is limited by the fact that subjects' level of anxiety and general emotional state can strongly influence results. Moreover, it is doubtful whether the test can be used reliably by psychologists without specific training. The potential for misuse and even for preparing subjects to give false-positive results should not be underestimated. All psychological and medical techniques proposed in the past to yield clear answers in criminal cases (eg, the polygraph,[19] hypnosis, stylometry,[20] and drug-aided interviews[21]) have proved to be potentially unreliable, liable to be manipulated, and subject to both false-positive and false-negative results. And they may even increase the risk of false confessions[22]—for example, by enhancing suggestibility under hypnosis.[23] Assessments should therefore be based on individual clinical examinations carried out by a mental health professional with forensic training. In many cases, both a psychiatric and a psychological assessment is appropriate. The legal rule, in England and Wales, restricting the admissibility of the conclusions of such assessments to individuals with demonstrable abnormal state of mind should be dropped.

The revelation of the psychopathology of false confessions has important consequences for forensic medicine and psychology. It uncovers much wider weaknesses and dangers in the criminal justice system resulting from inadequate professional standards and from problems of communication between doctors and psychologists on the one side and the police, lawyers, and courts on the other. Interventions by professional experts are unregulated and responsive to the pressures and influences inherent in the adversarial tradition of English criminal law and the unregulated system of selecting and remunerating forensic experts. The professional bodies concerned, representing psychiatrists, psychologists, and lawyers, should draw up a detailed code of practice governing the work of forensic psychiatrists and psychologists in criminal cases as well as a system of accreditation and continuous education. A clear distinction must be made between forensic assessments, contributing to the criminal justice process, and ordinary medical intervention, providing health care for detained persons.[24] Medicine and psychology should help to prevent miscarriages of justice and not contribute actively or passively to this most pernicious form of injustice.

The Lancet

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Chamberlin Archival Services

Project CAS9602
Molly Justice Inquiry
Tabulation of Records Searched at the British Columbia Information Management Services (Provincial Archives)

Number	Description	Action Taken	Result
Fully Described Government Records ("GR")			
GR 99	Provincial Police Force Superintendent. Miscellaneous correspondence, reports, publications and blank forms sent to the Superintendent. 1892-1942.	Examined finding aid.	Not relevant
GR 419	Attorney General. Documents series. 1857-1966.	Looked for file on Frank Hulbert/Pepler or William Mitchell.	No file on Frank Hulbert/Pepler. In file on William Mitchell was a copy of the proceedings of his preliminary hearing on the murder charge. Photocopied proceedings but later discovered that MT had same.
GR 491	Boys Industrial School.	Examined chronological and alphabetical registers of boys admitted for Frank Hulbert.	Gave his number, name, date of admission, term, offence and place of residence. Case files do not exist for 1943.
GR 1424	Boys Industrial School Inquiry (1934). 1930-1944.	Eric Pepler was one of the commissioners for this study. As well, Frank Hulbert was sent to the Boys Industrial School after his conviction for indecent assault in 1943. Examined records.	Not relevant.
GR 1502	Attorney General. Inquisitions/inquests conducted by Coroners in British Columbia. 1938-1967.	Examined inquest of Molly Justice	Printed out inquest record and forwarded to MT.
GR 1504	Attorney General. Inquiries conducted in British Columbia, except for Vancouver, 1938-1965; and for entire province, including Vancouver, 1966-1970. 1938-1970.	Looked for inquest for Molly Justice.	Nothing found.
GR 1513	Attorney General. Indexes to coroners' inquiries and inquests. 1938-1944.	Looked for reference to inquest for Molly Justice.	Found inquest (see GR 1502).
GR 1607	Attorney General. Bench books from various judges/justices. 1907-1964.	Examined finding aid	Does not include bench books of the judges we are interested in.

Number	Description	Action Taken	Result
GR 1723	Attorney General. Correspondence. 1938-1952	Examined finding aid and selected files I-177 (Industrial School for Boys Act) and L-221 (Lunacy Act), the only ones with the remotest connection to this case.	Nothing found related to Frank Hulbert/Pepler or Eric Pepler.
GR 1724	Attorney General. Correspondence. 1959-1972.	Examined finding aid.	Found nothing related to 1943 or 1968/69 trials or individuals we are interested in.
GR 1725	Attorney General. Correspondence. 1959-1965.	Examined finding aid.	Found nothing related to 1943 or 1968/69 trials or individuals we are interested in.
GR 1726	Attorney General. Correspondence. 1952-1959.	Examined finding aid.	Found nothing related to 1943 or 1968/69 trials or individuals we are interested in.
GR 1727	Judges' bench books	Examined volumes 662 and 663, Judge Coady's bench books for the period of the Mitchell trial.	Volume 662 ends just before Mitchell's trial, and volume 663 starts in 1944. David Mason of BCIMS staff remembers a bench book being taken by police acting on an order of the Attorney General in 1968. This was probably the missing volume required for the Hulbert perjury trial. No further searching as MT had transcript of judge's notes on the Mitchell trial.
GR 1864	Supreme Court (Victoria). Assizes criminal record book. 1917-1948.	Examined for reference to Hulbert or Mitchell	Found skeleton outline of trial of William Mitchell. Printed out and forwarded to MT.
GR 1904	Supreme Court (Victoria). Jury records for Victoria Supreme and County Courts. 1907-1953.	Examined names of jurors for 1942-1945.	Found nothing of interest to this case.
GR 1924	County Court (Victoria). Criminal record books. 1888-1953.	Looked for names Pepler, Hulbert or Mitchell	Nothing found except for a reference to a trial of a William Mitchell in 1931, evidently having to do with lottery tickets.
GR 1926	Supreme Court (Victoria). Criminal assize calendars for Victoria. 1870-1965.	Looked for trial of William Mitchell.	No entry found.
GR 2009	Supreme Court (Victoria). Central will registry. 1946-1980	Examined Eric Pepler's will	EP bequeathed all his property to his wife Nora Cecily Huson Pepler, or, if she should predecease him, to his daughters. No reference to Thomas Pepler or Frank Pepler/Hulbert.
GR 2967	Attorney General. Correspondence from C750-3 County Courts and C830. Criminal prosecutions. 1970-1974.	Looked for a file title or referenceto Hulbert's perjury trial.	No entry found.
GR 3016	Supreme Court (Victoria). Probate/estate files. 1950-1981.	Examined Eric Pepler's probate file.	No reference to Thomas Pepler or Frank Pepler/Hulbert.

Number	Description	Action Taken	Result
Undescribed Government Records (Old Accessioning System)			
G81-132	Attorney General. Indexes. n d.	Examined.	Much older than the period we are examining, and no one has determined what they index.
G85-153	Attorney General. Criminal files. 1970s.	Examined four of the five boxes. Box 5 cannot be located.	Nothing of interest.
G86-084	British Columbia. Attorney General. Indexes to correspondence 1921-1957	Requested.	Not located. I may have examined these indexes under some other guise. Sometimes records under this old accessioning system have been processed but the old accession record was not update.
Undescribed Government Records (Current Accessioning System)			
86-0091	Attorney General. Legal Services. Deputy's files (civil files). ca. 1970-1977	Examined accession file.	Not relevant
86-0082	Dept. of the Attorney General. Legislative Counsel. Closed case files 1940-1970.	Examined files 1059, 1067 and 1068 (all Evidence Act); and 5102-5104 (General correspondence).	The first set of files all relate to legislation, and nothing in the second set are relevant.
87-0019	Attorney General. Correspondence of A L. Pearson, Associate Attorney General. 1951-1979	Examined accession file.	Not relevant.
87-0176	Dept. of the Attorney General. Case files of the Administrative, Civil and Criminal Law Divisions. 1971-1972.	Examined accession file.	Not relevant
87-0308	Dept. of the Attorney General. Criminal law: files of Neil A. McDiarmid, Director. 1957-1975.	Examined accession file.	Not relevant.
87-0325	Ministry of Attorney General. General office files: legal opinions, submissions and investigations. 1974-1985.	Examined accession file.	Concerned with consumer complaints. Not relevant.
88-0515	Ministry of Attorney General. General office files. 1973-1984.	Examined accession file.	Not relevant.
88-0755	Ministry of Attorney General. Deputy Attorney General. General correspondence. 1972-1987.	Examined accession file.	Not relevant
89-0129	Ministry of Attorney General. Prosecution files selected for archival review. 1973-1989	Examined accession file.	Not relevant
89-0882	Ministry of Attorney General. Prosecution files. 1938-1986.	Examined accession file.	Files of the Superintendent of Motor Carriers. Not relevant.
91-1276	Ministry of Attorney General. Executive Committee. Executive records. 1971-1983.	Examined accession file.	Not relevant

Number	Description	Action Taken	Result
91-1420	Ministry of Attorney General. Judges' bench books. 1916-1975.	Examined accession file.	Not our judge.
91-3136	Dept. Of the Attorney General. Warrant files. 1940-1972.	Examined accession file.	Not relevant.
91-3356	Dept. Of the Attorney General. Warrant files. 1950-1972	Examined accession file.	Not relevant.
91-4209	Dept. Of the Attorney General. Closed adult client administration files. 1914-1954.	Examined accession file.	These records document administration of estates of the insane. Not relevant
91-4294	Dept. of the Attorney General. Legal Services to Government. Central filing system. 1938-1970.	Examined accession file.	Not relevant
91-8431	Ministry of Attorney General. Legislative Counsel. Opinions and advice. 1800[?]-1994.	Examined accession file.	Related to Crown Lands. Not relevant.
92-6246	Ministry of Attorney General. Administrative Services. Judges bench books. 1957-1975.	Examined accession file.	Not pertinent to this case.
Fully Described Private Records ("Add. MSS.")			
Add. MSS 11	Maitland, Royal Lethington. 1913-1946	Examined Correspondence. Attorney General, 1943-1946 (v.3, files 12-15)	Nothing relevant to this case. Reported August 7
Add. MSS 285	Hulbert family. 1858-1928.	Examined two letter books, 1918-1928.	Not relevant.
Add. MSS 781	Maitland family. 1911-1972.	Examined correspondence, 1943-1946, and scrapbooks, 1941-1946.	Nothing relevant to this case. Reported August 7.
Add. MSS 1134	Parsons, Thomas William Stanner. 1904-1960	Examined diaries, 1943.	Transcribed entries referring to this case. Reported July 30.